Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DE LA SALLE UNIVERSITY, INC.,
Respondent.

x----------x

DE LA SALLE UNIVERSITY INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x----------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DE LA SALLE UNIVERSITY, INC.
Respondent.

x----------x

G.R. No. 196596

G.R. No. 198841

G.R. No. 198941

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA,* and
LEONEN, *JJ.*

Promulgated:

09 NOV 2016

* On Official Leave.

DECISION

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 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

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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).

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 BIR's Special Large Taxpayers Task Force on educational institutions.

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, [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]

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7 Id. at 151-154.
8 Id. at 38 and 268.
9 Id. at 97-128.
10 Id. at 39 and 268-269.
11 Id. at 129-137.
12 Id. at 185-194.

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]

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

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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 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.

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

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 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]

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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.

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]

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]

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]

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26 *Rollo*, pp. 91-94 (G.R. No. 196596).
27 Id. at 72-76.
28 Id. at 88-90 (G.R. No. 198841).
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.

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 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]

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

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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).
40 Id. at 51-55.

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 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.

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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.

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

47 Id. at 24, 30.

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]

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.

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48 Id. at 25-26.
49 Id. at 41-48.
50 Id. at 34-48.
51 Id. at 9-43 (G.R. No. 198941).
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.

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]

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 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

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55 Id. at 282.
56 Id. at 286-289.
57 Id. at 287.
58 Id. at 290.
59 Id. at 291.
60 Id. at 283.
61 Id. at 296-301.

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]

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.

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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.

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

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]

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-à-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
>
> **(H) A non-stock and non-profit educational institution**
>
> x x x x

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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).

> 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 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 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

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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-à-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."

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

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]

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.

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75 Id. at 575-578.
76 Id. at 581-582.
77 Id. at 580-581.

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 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

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[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).

[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.

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.*

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 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.

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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).

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.

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.*

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

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90 245 Phil. 83 (1988).

91 Id. at 91-92.

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.

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]

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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.

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.

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.

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

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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.

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

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 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.

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99 Section 222, Tax Code.
100 *Rollo*, p. 78 (G.R. No. 198841).
101 Id. at 75-79.
102 Id. at 73-74.

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

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

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.

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.

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 rules of evidence may defeat the intent of the Constitution.

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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).

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

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]

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.

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

118 *Rollo*, p. 143-144 (G.R. No. 196596).

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

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 "[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]

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.

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120 Id. at 143 (G.R. No. 196596). Capital Fund – Capital Projects Account.
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).
124 Id. at 81 (G.R. No. 198841).

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]

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

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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.

129 Id.

130 Id. at 86.

> 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 is ₱1,761,588.35.[131] (*emphasis supplied*)

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).

4. The 26.68% ratio[134] was the result of dividing the substantiated disbursements from the CF-CPA Account as found by the

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131 Id. at 85-86.

132 The tax base of P4,841,066.65 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 P1,761,308.37 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**

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%**

> 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 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.

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135 For brevity, the exact amount of ₱10,610,379.00 shall hereinafter be expressed as P10.61 million.

136 For brevity, the exact amount of ₱6,602,655.00 shall hereinafter be expressed as P6.60 million.

137 For brevity, the exact amount of ₱23,463,543.02 shall hereinafter be expressed as P23.46 million.

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

138 *Supra* note 130.

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.

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]

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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 Circular137-87 and BIR Ruling No. 173-88.

140 Id. at 83 (G.R. No. 198841).

141 Id. at 83 (G.R. No. 198841).

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).

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, 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

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

145 Id. at 47 (G.R. No. 198841).

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).

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 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.

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

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150 Section 173, Tax Code.

151 Sections 179 and 195, Tax Code.

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**.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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

MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
JOSE CATRAL MENDOZA
Associate Justice

See Dissenting opinion
MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice