SECOND DIVISION

G.R. No. 196596 – COMMISSIONER OF INTERNAL REVENUE, Petitioner **v. DE LA SALLE UNIVERSITY, INC.,** Respondent.

G.R. No. 198841 – DE LA SALLE UNIVERSITY, INC., Petitioner **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

G.R. No. 198941 – COMMISSIONER OF INTERNAL REVENUE, Petitioner **v. DE LA SALLE UNIVERSITY, INC.,** Respondent.

Promulgated: 09 NOV 2016

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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 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.
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> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
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> 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.
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> 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 other periods or years shall be specifically indicated in the L/A.*
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> . . . .
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> 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.
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> D. Preparation and issuance of L/As.
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> 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

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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.

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)

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 supplied 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.

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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].

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.

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, verify, 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

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

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].

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

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

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[8] Id. at 257–259.

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.
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> 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 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.
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> 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]

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[9] Id. at 259–260.

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)

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:

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

11 Id. at 542.

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].

(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.

(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*

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

LL-4-C).[17] (Emphasis in the original)

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	P	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		**P 14,158,711.48**	**P 17,126,033.76**	**P 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		**P 7,305,104.71**	**P 8,747,116.40**	**P 6,259,078.30**
Difference		**P 6,853,606.77**	**P 8,378,917.36**	**P 17,204,464.72**[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 P14,158,711.48 in 2001, P17,126,033.76 in 2002 and P23,463,543.02 in 2003. Of the said amounts, P6,853,606.77, 8,378,917.36, P17,204,464.72 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, 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

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

18 Id. at 122.

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

20 Id. at 132.

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").

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.
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> Q10: Please tell us the relevance of Exhibits "YY", "ZZ" and "AAA".
> 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.
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> 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.
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> The specifics which accompany the entries were all taken from the documents before these were inadvertently misplaced.
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> 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

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[23] Id. at 166.
[24] Id. at 167–169.
[25] Id. at 170–172.
[26] Id. at 174–179.
[27] Id. at 140.
[28] Id. at183, Judicial Affidavit of witness Francisco C. De La Cruz, Jr. dated 15 April 2010.

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 WOOD 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]

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

Charge Account	Classification of Expense per Chart of Accounts 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.
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> The Court is not convinced.
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> According to ICPA's findings, the petitioner was able to show only the disbursements from the CF-CPA amounting to P7,305,104.71, P8,747,116.40 and P6,259,078.30 for the fiscal years 2001, 2002 and

29 Id. at 169.
30 Id. at 172.
31 Id. at 179.
32 Id. at 145.

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

> Using the amounts determined for the Fiscal Year 2003,
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> $$\frac{\text{P6,259,078.30}}{\text{P23,463,543.02}} = 26.68\% \times \text{P6,602,655.00} = \text{P1,761,588.35}$$

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 on a misapprehension of facts;[38] or (3) when the tax court failed to

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

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:

> RULE 130
> Rules of Admissibility
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> . . . .
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> 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

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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*, 357 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.

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 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.

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45 *Rollo* (G.R. No. 196596), p. 91.
46 Id.

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 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.

MARVIC M.V.F. LEONEN
Associate Justice

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