



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

HON. KIM S. JACINTO-HENARES,  
in her official capacity as  
COMMISSIONER OF THE BUREAU  
OF INTERNAL REVENUE,  
Petitioner,

G.R. No. 215383

Present:

CARPIO, J., Chairperson,  
PERALTA,  
MENDOZA,  
REYES,\* and  
LEONEN, JJ.

- versus -

ST. PAUL COLLEGE OF MAKATI,  
Respondent.

Promulgated:

08 MAR 2017

X -----X

RESOLUTION

CARPIO, J.:

The Case

This petition for review<sup>1</sup> assails the Decision dated 25 July 2014<sup>2</sup> and Joint Resolution dated 29 October 2014<sup>3</sup> of the Regional Trial Court, Branch 143, Makati City (RTC), in Civil Case No. 13-1405, declaring Revenue Memorandum Order (RMO) No. 20-2013 unconstitutional.

The Facts

On 22 July 2013, petitioner Kim S. Jacinto-Henares, acting in her capacity as then Commissioner of Internal Revenue (CIR), issued RMO No. 20-2013, "*Prescribing the Policies and Guidelines in the Issuance of*

\* Designated Fifth Member per Special Order No. 2416-BB dated 4 January 2017.

<sup>1</sup> Rollo, pp. 11-50. Under Rule 45 of the 1997 Rules of Civil Procedure.

<sup>2</sup> Id. at 58-61. Penned by Presiding Judge Maximo M. De Leon.

<sup>3</sup> Id. at 62-66.

*Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended.”*

On 29 November 2013, respondent St. Paul College of Makati (SPCM), a non-stock, non-profit educational institution organized and existing under Philippine laws, filed a Civil Action to Declare Unconstitutional [Bureau of Internal Revenue] RMO No. 20-2013 with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction<sup>4</sup> before the RTC. SPCM alleged that “RMO No. 20-2013 imposes as a prerequisite to the enjoyment by non-stock, non-profit educational institutions of the privilege of tax exemption under Sec. 4(3) of Article XIV of the Constitution both a registration and approval requirement, i.e., that they submit an application for tax exemption to the BIR subject to approval by CIR in the form of a Tax[]Exemption Ruling (TER) which is valid for a period of [three] years and subject to renewal.”<sup>5</sup> According to SPCM, RMO No. 20-2013 adds a prerequisite to the requirement under Department of Finance Order No. 137-87,<sup>6</sup> and makes failure to file an annual information return a ground for a non-stock, non-profit educational institution to “automatically lose its income tax-exempt status.”<sup>7</sup>

In a Resolution dated 27 December 2013,<sup>8</sup> the RTC issued a temporary restraining order against the implementation of RMO No. 20-2013. It found that failure of SPCM to comply with RMO No. 20-2013 would necessarily result to losing its tax-exempt status and cause irreparable injury.

In a Resolution dated 22 January 2014,<sup>9</sup> the RTC granted the writ of preliminary injunction after finding that RMO No. 20-2013 appears to divest non-stock, non-profit educational institutions of their tax exemption privilege. Thereafter, the RTC denied the CIR’s motion for reconsideration. On 29 April 2014, SPCM filed a Motion for Judgment on the Pleadings under Rule 34 of the Rules of Court.

<sup>4</sup> Id. at 85-100.

<sup>5</sup> Id. at 87. RMO No. 20-2013, Section 10 states: “Tax Exemption Rulings may be renewed upon filing of a subsequent Application for Tax Exemption/Revalidation, under same requirements and procedures provided herein. Otherwise, the exemption shall be deemed revoked upon the expiration of the Tax Exemption Ruling. The new Tax Exemption Ruling shall be valid for another period of three (3) years, unless sooner revoked or cancelled.”

<sup>6</sup> Rules and Regulations Implementing Section 4(3), Article XIV of the New Constitution. Dated 16 December 1987.

<sup>7</sup> RMO No. 20-2013, Section 11 states: “If a corporation or association which has been issued a Tax Exemption Ruling fails to file its annual information return, it shall automatically lose its income tax-exempt status beginning the taxable year for which it failed to file an annual information return, in addition to the sanctions imposed under Section 250 of the NIRC, as amended.”

<sup>8</sup> *Rollo*, pp. 110-112.

<sup>9</sup> Id. at 113-115.

### The Ruling of the RTC

In a Decision dated 25 July 2014, the RTC ruled in favor of SPCM and declared RMO No. 20-2013 unconstitutional. It held that “by imposing the x x x [prerequisites alleged by SPCM,] and if not complied with by non-stock, non-profit educational institutions, [RMO No. 20-2013 serves] as diminution of the constitutional privilege, which even Congress cannot diminish by legislation, and thus more so by the [CIR] who merely exercise[s] quasi-legislative function.”<sup>10</sup>

The dispositive portion of the Decision reads:

WHEREFORE, in view of all the foregoing, the Court hereby declares BIR RMO No. 20-2013 as UNCONSTITUTIONAL for being violative of Article XIV, Section 4, paragraph 3. Consequently, all Revenue Memorandum Orders subsequently issued to implement BIR RMO No. 20-2013 are declared null and void.

The writ of preliminary injunction issued on 03 February 2014 is hereby made permanent.

SO ORDERED.<sup>11</sup>

On 18 September 2014, the CIR issued RMO No. 34-2014,<sup>12</sup> which clarified certain provisions of RMO No. 20-2013, as amended by RMO No. 28-2013.<sup>13</sup>

In a Joint Resolution dated 29 October 2014, the RTC denied the CIR’s motion for reconsideration, to wit:

WHEREFORE, viewed in the light of the foregoing premises, the Motion for Reconsideration filed by the respondent is hereby DENIED for lack of merit.

Meanwhile, this Court clarifies that the phrase “Revenue Memorandum Order” referred to in the second sentence of its decision dated July 25, 2014 refers to “issuance/s” of the respondent which tends to implement RMO 20-2013 for if it is otherwise, said decision would be useless and would be rendered nugatory.

SO ORDERED.<sup>14</sup>

<sup>10</sup> Id. at 61.

<sup>11</sup> Id.

<sup>12</sup> “Clarifying Certain Provisions of Revenue Memorandum Order (RMO) No. 20-2013, as amended by RMO No. 28-2013, on the issuance of Tax Exemption Rulings for Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as amended.”

<sup>13</sup> RMO No. 28-2013 (dated 29 October 2013) amends Section 10 of RMO No. 20-2013 as follows: “SEC. 10. Tax Exemption Rulings may be renewed upon filing of a subsequent Application for Tax Exemption/Revalidation, under same requirements and procedures provided herein. Failure to renew the Tax Exemption Ruling shall be deemed revocation thereof upon the expiration of the three (3)-year period. The new Tax Exemption Ruling shall be valid for another period of three (3) years, unless sooner revoked or cancelled.”

<sup>14</sup> *Rollo*, p. 66.

Hence, this present petition.

### **The Issues**

The CIR raises the following issues for resolution:

WHETHER THE TRIAL COURT CORRECTLY CONCLUDED THAT RMO [NO.] 20-2013 IMPOSES A PREREQUISITE BEFORE A NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION MAY AVAIL OF THE TAX EXEMPTION UNDER SECTION 4(3), ARTICLE XIV OF THE CONSTITUTION.

WHETHER THE TRIAL COURT CORRECTLY CONCLUDED THAT RMO NO. 20-2013 ADDS TO THE REQUIREMENT UNDER DEPARTMENT OF FINANCE ORDER NO. 137-87.<sup>15</sup>

### **The Ruling of the Court**

We deny the petition on the ground of mootness.

We take judicial notice that on 25 July 2016, the present CIR Caesar R. Dulay issued RMO No. 44-2016, which provides that:

**SUBJECT: Amending Revenue Memorandum Order No. 20-2013, as amended (Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended)**

**In line with the Bureau's commitment to put in proper context the nature and tax status of non-profit, non-stock educational institutions, this Order is being issued to exclude non-stock, non-profit educational institutions from the coverage of Revenue Memorandum Order No. 20-2013, as amended.**

SECTION 1. Nature of Tax Exemption. --- **The tax exemption of non-stock, non-profit educational institutions is directly conferred by paragraph 3, Section 4, Article XIV of the 1987 Constitution, the pertinent portion of which reads:**

**"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."**

<sup>15</sup> Id. at 30.

This constitutional exemption is reiterated in Section 30 (H) of the 1997 Tax Code, as amended, which provides as follows:

“Sec. 30. Exempt from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:

x x x                      x x x                      x x x

(H) A non-stock and non-profit educational institution; x x x.”

**It is clear and unmistakable from the aforequoted constitutional provision that non-stock, non-profit educational institutions are constitutionally exempt from tax on all revenues derived in pursuance of its purpose as an educational institution and used actually, directly and exclusively for educational purposes. This constitutional exemption gives the non-stock, non-profit educational institutions a distinct character. And for the constitutional exemption to be enjoyed, jurisprudence and tax rulings affirm the doctrinal rule that there are only two requisites: (1) The school must be non-stock and non-profit; and (2) The income is actually, directly and exclusively used for educational purposes. There are no other conditions and limitations.**

**In this light, the constitutional conferral of tax exemption upon non-stock and non-profit educational institutions should not be implemented or interpreted in such a manner that will defeat or diminish the intent and language of the Constitution.**

SECTION 2. Application for Tax Exemption. --- Non-stock, non-profit educational institutions shall file their respective Applications for Tax Exemption with the Office of the Assistant Commissioner, Legal Service, Attention: Law Division.

SECTION 3. Documentary Requirements. --- The non-stock, non-profit educational institution shall submit the following documents:

- a. Original copy of the application letter for issuance of Tax Exemption Ruling;
- b. Certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission;
- c. Original copy of the Certification under Oath of the Treasurer as to the amount of the income, compensation, salaries or any emoluments paid to its trustees, officers and other executive officers;
- d. Certified true copy of the Financial Statements of the corporation for the last three (3) years;
- e. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development

Authority (TESDA); Provided, that if the government recognition/permit/accreditation to operate as an educational institution was issued five (5) years prior to the application for tax exemption, an original copy of a current Certificate of Operation/Good Standing, or other equivalent document issued by the appropriate government agency (i.e., CHED, DepEd, or TESDA) shall be submitted as proof that the non-stock and non-profit education is currently operating as such; and

f. Original copy of the Certificate of utilization of annual revenues and assets by the Treasurer or his equivalent of the non-stock and non-profit educational institution.

SECTION 4. Request for Additional Documents. --- In the course of review of the application for tax exemption, the Bureau may require additional information or documents as the circumstances may warrant.

SECTION 5. Validity of the Tax Exemption Ruling. --- Tax Exemption Rulings or Certificates of Tax Exemption of non-stock, non-profit educational institutions shall remain valid and effective, unless recalled for valid grounds. They are not required to renew or revalidate the Tax exemption rulings previously issued to them.

The Tax Exemption Ruling shall be subject to revocation if there are material changes in the character, purpose or method of operation of the corporation which are inconsistent with the basis for its income tax exemption.

SECTION 6. Transitory Provisions. --- To update the records of the Bureau and for purposes of a better system of monitoring, non-stock, non-profit educational institutions with Tax Exemption Rulings or Certificates of Exemption issued prior to June 30, 2012 are required to apply for new Tax Exemption Rulings.

SECTION 7. Repealing Clause. --- Any revenue issuance which is inconsistent with this Order is deemed revoked, repealed, or modified accordingly.

SECTION 8. Effectivity. --- This Order shall take effect immediately. (Emphases supplied)

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use.<sup>16</sup> Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.<sup>17</sup>

With the issuance of RMO No. 44-2016, a supervening event has transpired that rendered this petition moot and academic, and subject to denial. The CIR, in her petition, assails the RTC Decision finding RMO

<sup>16</sup> *Timbol v. Commission on Elections*, 751 Phil. 456 (2015); *Carpio v. Court of Appeals*, 705 Phil. 153 (2013), citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723 (2007); *Abdul v. Sandiganbayan*, 722 Phil. 485 (2013).

<sup>17</sup> *Carpio v. Court of Appeals*, 705 Phil. 153 (2013), citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723 (2007).



No. 20-2013 unconstitutional because it violated the non-stock, non-profit **educational** institutions' tax exemption privilege under the Constitution. However, subsequently, RMO No. 44-2016 clarified that non-stock, non-profit **educational** institutions are excluded from the coverage of RMO No. 20-2013. Consequently, the RTC Decision no longer stands, and there is no longer any practical value in resolving the issues raised in this petition.

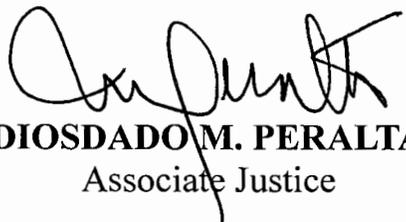
**WHEREFORE**, we **DENY** the petition on the ground of mootness. We **SET ASIDE** the Decision dated 25 July 2014 and Joint Resolution dated 29 October 2014 of the Regional Trial Court, Branch 143, Makati City, declaring Revenue Memorandum Order No. 20-2013 unconstitutional. The writ of preliminary injunction is superseded by this Resolution.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

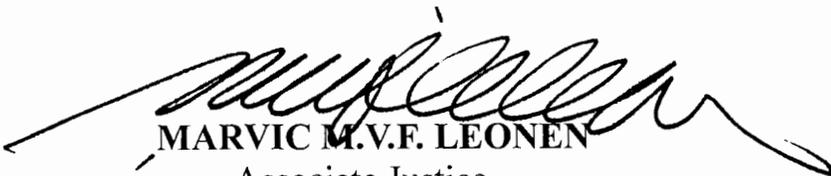
**WE CONCUR:**



**DIOSDADO M. PERALTA**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution 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

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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