REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

B.F. GOODRICH PHILIPPINES, INC.,
(now SIME DARBY INTERNATIONAL
TIRE CO., INC.),
Petitioner,

- versus - C.T.A. CASE NO. 3237

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

3/29/91

D E C I S I O N

A case arising from an assessment issued by respondent against petitioner for deficiency donor's tax for the taxable period 1974 in the sum of P1,020,850.40 is before us for review.

The parties have entered into a stipulation of facts and we have found the following relevant among others:

> 1. That petitioner, formerly known as B.F. Goodrich Philippines, Inc., was, prior to July 3, 1974, an American owned and controlled corporation;
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> 2. That as a condition for approving petitioner's request to manufacture tires and other rubber products in the Philippines, the Central Bank imposed the requirement that petitioner develop rubber plantation;
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> 3. That in compliance with the aforementioned requirement, sometime in 1961, petitioner bought from the Government under the Public Land Act and

the Parity Amendment to the 1935 Constitution, certain parcels of land in Tumajubong, Basilan, for a consideration of P30,000.00 on which petitioner established its rubber plantation;

4. That during the period from 1972 to 1975, Tumajubong, Basilan, wherein the parcels of land acquired by petitioner are located, was heavily infiltrated by rebels and the Government Armed Forces could not guaranty the peace and order condition of the area;

5. That because of the unsettled peace and order condition in Tumajubong, Basilan, sometime in February 1973, residents, including plantation workers, evacuated the area, hence, there existed no genuine commercial competition therein; they subsequently returned only after the Armed Forces of the Government succeeded in driving the rebels off the plantation;

6. That the land in question is in the interior portion of Basilan and not readily accessible to transportation, it being 16 kilometers from the Poblacion and 9 kms. from the sea; it is, therefore, far from the center of trade, public roads and the sea;

7. That during that aforesaid period from 1972 to 1975, the petitioner was operating its Tumajubong plantation on voluntary basis, that is, its employees therein were not compelled to work regularly, but rather, they, especially the rubber tapper, reported for work voluntarily without observing regular work hours;

8. That in view of the opinion of the Secretary of Justice the petitioner had to sell the land in question, containing an area of 995 hectares, more or less, to Siltown Realty Corporation, a Filipino owned and controlled realty corporation for a consideration of

P500,000 payable on installment and subject to such terms and conditions as provided in that Deed of Sale hereto attached as Annex "A" and made an integral part hereof;

9. That in accordance with the aforesaid Deed of Sale, the petitioner has leased from Siltown Realty Corp. the aforementioned land, for a period of 25 years, subject to an extension thereof of another 25 years at its option, for an annual rental provided in the said Deed of Sale (Annex "A"):

Petitioner assigns these issues for resolution:

a) Whether the assessment dated October 12, 1980 and erroneously reiterated in a different amount on March 16, 1981 proceeded from invalid tax investigations;

b) Whether the sale by B.F. Goodrich of its Basilan property in 1974 was a transfer for insufficient consideration; and

c) Whether the government's right to assess B.F. Goodrich had already prescribed considering the absence of fraud.

d) Whether the Honorable Court has jurisdiction over the instant case.

Respondent, for his part, failed to file his memorandum and we note that it is very dissatisfying for respondent to fail in this regard despite the several extension periods asked and granted to him by the court. Considering the priority and importance given to tax cases, and with the duty imposed by law upon respondent to administer and enforce internal revenue laws, it is unworthy of the respondent to be remiss of his duty in this aspect. Nevertheless, the lack of memorandum did not prevent us from finding in favor of the respondent based on the BIR Record and other evidence submitted. *(see Formal Offer of Exhibits)*

The issue of jurisdiction is best settled first so that doubts as to the propriety or validity of this adjudication is taken care of. It was that after answer was filed by respondent, an "Urgent *Ex-Parte* Motion to Withdraw BIR Records" was also submitted by him. Subsequently, a "Supplemental Petition for Review" was filed and it was here that petitioner referred to the letter of February 7, 1983 of respondent adverting once again to the protest against the assessment, as if only then making a final decision on the case of petitioner. The letter states, in part:

> "In reply, I have the honor to inform you that after a careful review of the facts of the case, as well as the law and jurisprudence applicable thereto. this Office cannot draw aside from the amount of P 2,460,647.00 which appears in the Basilan City Assessor's Office as the market value of the land your client sold in 1974 as the basis for the donor's tax assessment pursuant to the explicit provision of Section 91 (par. 2) of the 1974 Tax Code."

Proceeding from the tone of this letter, respondent's "Answer to Supplemental Petition" contends that this court has no jurisdiction to entertain the original petition for review filed on April 23, 1981 nor jurisdiction on the supplemental petition, since petitioner received respondent's final decision on its protest only on July 10, 1984.

This contention is not well-founded.

Respondent, at the start, in his answer, failed to contest the jurisdiction of this court on the grounds brought out in his answer to the supplemental petition for review. Instead, hearings were scheduled even after respondent filed an "Urgent Ex-Parte Motion to Withdraw BIR Records." After answering the supplemental petition for review respondent participated in the trial, and, except for his lack of memorandum had offered evidence for his case. Having submitted himself to the jurisdiction of this court, respondent is estopped from questioning the same. Furthermore, with the result of this case any contemplation of this kind should be disregarded by respondent.

Petitioner's initial thrust questions the alleged lack of authority of the examiners who came with the assessment of March 16, 1981 and previous assessment dated October 10, 1980. Both assessments are antedated by another assessment dated April 23, 1975 *(Exh. "I", p. 130, Record)* and petitioner emphasizes that it had paid the deficiency income tax in that first assessment. To be sure, the assessments of October 10, 1980 and March 16, 1981 *(Exh. 9, p. 3, BIR record)* were the products of Letters of Authority Nos. 074420 RR and 074421 RR and Memorandum Authority Reference No. 749157 of June 26, 1980 addressed to Siltown Realty Philippines, Inc. In fact, it was indeed Siltown Realty whose income, business and other tax liabilities were investigated on the basis of the letters and memorandum *(Exhibit 6, p. 14, BIR record)* and culminated in the findings discovered by Revenue Examiner Valentin B. Santos *(pp. 14-15, BIR record)*. This notwithstanding, the examination and investigation of the case of Siltown Realty can not and does not preclude the possibility of yielding such findings pertaining to transactions Siltown has had with other business entities. Surely, these findings can be used to serve the purposes of the Commissioner of Internal Revenue allowed under the law.

The Comments and Observations of Revenue Examiner Valentin B. Santos has to say:

> "In view of the foregoing facts and circumstances, the primary purpose for which Letters of Authority Nos. 074420 RR and 074421 RR, both dated November 29, 1977, to investigate and examine the tax liabilities of SILTOWN REALTY PHILIPPINES, INC. for the taxable year 1975, becomes secondary and subsidiary to the determination of the transfer tax liabilities of B.F. GOODRICH PHILIPPINES, INC., as a consequence of its execution of the Deed of Sale transferring its ownership of the subject parcels of land to Siltown Realty Philippines, Inc. for the principal sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00)

The facts and circumstances, alluded to by Examiner Santos which consequently led to the second assessment of March 16, 1981 are telling as he found that:

> 1. SILTOWN REALTY PHILIPPINES, INC., B.F. Goodrich bldg., corner Ayala and Buendia Avenues, Makati, Metro Manila was incorporated on May 20, 1974 and duly registered with the Securities and Exchange Commission under Registration Certificate No. 56186 dated May, 29, 1974;
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> 2. It is also registered with the Board of Investment under Registration Certificate No. 492 dated June 20, 1974. The certificate issued authorized subject taxpayer to engage in the realty business, primarily, to hold and acquire the land of B.F. Goodrich Philippines, Inc., subject, however, to the conditions that:

a) it will limit its landholding to the land excluding improvements thereon presently owned by B.F. Goodrich Philippines, Inc., and

b) it shall submit an annual report of its business activities on or before March 31 of each year, in accordance with the provisions of R.A. 5455.

The Board of Investment certificate further qualified that the authority is limited to the right to hold the abovementioned land.

3. Prior to the taxable year under review, a Deed of Sale was executed on June 21, 1974 by and between B.F. Goodrich Philippines, Inc. and Siltown Realty Philippines, Inc. whereby parcels of land situated in Tumajubong, Lamitan, Basilan owned by the former and containing an area of NINE HUNDRED NINETY FIVE (995) hectares, more or less, were sold to the latter for the principal sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00);

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5. Per tax declaration No. 1082 (2645) of the Register of Deeds of Basilan (Certified true copy of tax declaration forming part of this report) filed by B.F. Goodrich Philippines, Inc. under P.D. No. 76 and sworn to accordingly on March 25, 1974, the value of the agricultural and urban landholdings of B.F. Goodrich Philippines, Inc. which is the subject of the foregoing Deed of Sale (No. 3 above) is P2,475,467.00 and P207,700.00, respectively, or an aggregate value of P2,683,467.00;

But petitioner would insist that Section 337 of the 1974 Tax Code (now Sec. 235, NIRC of 1986) allows only one examination and inspection done of books or records during the five-year period that books and accounting records are required to be preserved. This contention is however unavailing for this case as the conditions present here put the case within the exceptions covered by Section 337 of the Tax Code of 1974. Petitioner denies fraud, but instances of irregularity or mistake (falsity) are also considered exceptions, reading Section 337.

Falsity is what we have here, and for that matter, we hasten to add that the second assessment (March 16, 1981) of the Commissioner was well-advised having been made in contemplation of his power under Section 15 of the 1974 Code (now Section 16, of NIRC) to assess the proper tax on the best evidence obtainable "when there is reason to believe that a report of a taxpayer is false, incomplete or erroneous." More, when there is falsity with intent to evade tax as in this case, the ordinary period of limitation upon assessment and collection does not apply so that contrary to the averment of petitioner, the right to assess respondent has not prescribed.

What is the considered falsity? The transfer through sale of the parcels of land in Tumajubong, Lamitan, Basilan in favor of Siltown Realty for the sum of P500,000.00 only whereas said lands had been sworn to under Presidential Decree No. 76 (Dec. 6, 1972) as having a value of P2,683,467 (P2,475,467 + P207,700) *(see Declaration of Real Property form, p. 28, and p. 15, no. 5, BIR Record)*. Paragraph 1 of P.D. No. 76 provides:

> "1. It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city, municipality or municipal district, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial or city assessor not later than June 30, 1973, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant.
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> The "current and fair market value" shall be understood to mean the "price at which a willing seller would sell and a willing buyer would buy neither being under abnormal pressure."

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The implication is clear, therefore, that when petitioner swore to the "current and fair market value" of the lands as to be that stated on the Declaration of Real Property form on March 25, 1974, such is their "current and fair market value" determined by petitioner as declarant.

Reference in turn, to the fair market value as reflected in the Declaration of Real Property form, is but proper, for Section 91, from a reading of Section 113 also of the 1974 Tax Code, points to it as to be the appraised value of the property for gift tax purposes when the taxpayer cannot convincingly show another.

> Sec. 91. "The estate shall be appraised at its fair market value as of the time of death, or as of six months thereafter, at the election of the executor or administrator, using for the purpose the current and fair market value as reflected in the schedules of values prepared by provincial and city assessors pursuant to Commonwealth Act. No. 470, as amended by Presidential Decrees Nos. 76 and 261, and unless the contrary is shown by the taxpayers, the schedule shall be binding upon all concerned for purposes of computing any internal revenue tax based on the value of the property (as amended by Sec. 1, P.D. No. 539).

A genuine business transaction does not come within the purport of the gift tax. That is, a transaction which is *bona fide*, and at arm's length *(**Angela Perez y Tuason et al. v. The Commissioner of Internal Revenue**, C.T.A. Case No. 1707, February 10, 1969, L-30403, July 3, 1969, citing **Commissioner v. Wemyss**, 324 U.S. 303, 65 S.Ct. 562 [1945])*. Petitioner may say that even to the extent that petitioner was a stockholder of the transferee corporation at the time of the transfer of the land, there could not have been a taxable donation *(Reply, p.38, Record)*, but this would be of no consequence because the element of donative intent is not material in transfers for less than adequate and full consideration (***Angela Perez y Tuason et al.,*** *supra*). It is also this circumstance that petitioner is a stockholder of Siltown Realty, and the fact that the concern of this transferee corporation Siltown is limited to acquiring and holding the lands talked about in this case, which decidedly work against whatever pretension that the aforesaid sale of lands is a transaction at "arm's length". Verily, if Siltown was formed for such purpose and petitioner is one of its stockholders, petitioner should have been looking only to the former for the sale. For that matter, the forthcoming end of the Executive Agreement appended as the Parity Amendment to the 1935 Constitution could not have come as a surprise for petitioner.

The Parity Amendment itself hinted that the effectivity of the privilege granted through the executive agreement to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States was in no case to extend beyond the third of July, 1974 (***Republic v. Quasha,*** *L-30299, August 17, 1972, 46 SCRA 160,* *175-176)*. And, in the case of ***Republic of the Philippines v. Quasha**, supra*, the Supreme Court had ruled and made known that an American or American-owned business enterprises who had acquired ownership of public agricultural or residential lands under and by virtue of the Parity Amendment will lose said ownership on July 3, 1974. With these previous pronouncements, petitioner should have been given adequate time and opportunity to prepare for the eventual termination of the Executive Agreement. And, if petitioner was minded to assist in the formation of a corporation that shall hold and acquire its lands, then it is only reasonable to infer that petitioner with its legal advisers should have been conscious all along of the date July 3, 1974.

Considering, therefore, the findings made by Us in this case, and comparing them with the computations and findings made by Revenue Examiner Valentin B. Santos *(BIR record, supra)* we deem that the total amount due from petitioner is as follows:

Fair Market Value (under PD. No. 76) Sold ...	P2,683,467.00
Deduct: Selling Price	500,000.00
Amount subject to Donor's Tax for insufficient consideration under Section 111, NIRC ...	P2,183,467.00
Tax Due thereon	P 615,577.00
Add: 50% Surcharge	307,788.50
14% Interest from 7/21/74 to 7/21/77 (42% Max.)	387,813.51
TOTAL AMOUNT DUE	P1,311,179.01

WHEREFORE, the decision of the Commissioner of Internal Revenue assessing petitioner deficiency gift tax is MODIFIED and petitioner is ordered to pay the amount of P1,311,179.01 plus 10% surcharge and 20% annual interest from March 16, 1981 until fully paid provided that the maximum amount that may be collected as interest on delinquency shall in no case exceed an amount corresponding to a period of three years pursuant to Section 130(b)(1) and (c) of the 1977 Tax Code, as amended by P.D. No. 1705, which took effect on August 1, 1980.

SO ORDERED.

Quezon City Metro Manila, March 29, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals