REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**C.T.A. EB No. 178** (C.T.A. Case No. 6796)
	Present:
-versus-	**Acosta, *P.J.*** **Castañeda, Jr.,** **Bautista,** **Uy,** **Casanova, and** **Palanca-Enriquez, *JJ.***
LA TONDEÑA DISTILLERS, INC. [now: GINEBRA SAN MIGUEL], *Respondent.*	Promulgated: SEP 26 2006 Apolinario

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DECISION

ACOSTA, P.J.:

This is a Petition for Review *En Banc* seeking the reversal and setting aside of the Decision of this Court's Second Division dated January 6, 2006, which ordered herein petitioner Commissioner of Internal Revenue (CIR) to refund to herein respondent La Tondeña Distillers, Inc., now Ginebra San Miguel, Inc., the amount of P14,140,980.00, representing erroneously paid documentary stamp tax (DST), in connection with the transfer of the entire assets of Sugarland Beverage Corporation (SBC), SMC Juice, Inc. (SMCJI) and Metro Bottled Water Corporation (MBWC), to respondent and the subsequent Resolution dated April 4, 2006 denying petitioner's Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Respondent is a resident corporation duly organized and existing under the laws of the Philippines and authorized by the Securities and Exchange Commission (SEC) to engage in business, with office address at 3rd and 6th Floor San Miguel Properties Centre, St. Francis Street, Mandaluyong City.

Petitioner is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of that Office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On September 17, 2001, respondent entered into a Plan of Merger with SBC, SMCJI and MBWC (collectively referred to as the "Absorbed Corporations"), with the former as the surviving corporation. The SEC approved the Plan of Merger on October 15, 2001 for which respondent was issued a Certificate of Filing of the Articles and Plan of Merger. Likewise, the SEC issued to respondent a Certificate of Filing of Amended Articles of Incorporation, for the change of corporate name from La Tondeña Distillers, Inc. (LTDI) to Ginebra San Miguel, Inc. (GSMI).

As a result of said merger, the entire assets and liabilities of the Absorbed Corporations were transferred to and absorbed by respondent. Consequently, on various dates, respondent paid to the BIR the amount of P14,140,980.00 representing DST on the transfer of real properties from the Absorbed Corporations to respondent.

Prior to the abovementioned payments, respondent requested for a confirmation of the tax-free nature of the said merger in a letter dated September 26, 2001. The BIR replied, via a Ruling dated November 5, 2001, that pursuant to Section 40(C)(2) and (6)(b) of the 1997 Tax Code, no gain or loss shall be recognized by the Absorbed Corporations as the transferors of all assets and liabilities to herein

76

respondent pursuant to the Plan of Merger (*Paragraph 3, Joint Stipulation of Facts and Issues*). The BIR, however, also stated in the said Ruling that:

> "The transfer of assets to LTDI, such as real properties shall be subject to the Documentary Stamp Tax (DST) imposed under Section 196 of the 1997 Tax Code."

Respondent believes that its total payment of the DST amounting to P14,140,980.00 on the transfer of assets on the occasion of the statutory merger has no basis. It contends that under Section 196 of the 1997 Tax Code, DST is imposed only on all conveyances, deeds, instruments or writings where realty sold shall be conveyed to a purchaser or purchasers. And in a statutory merger, the transferee has not "bought" or "purchased" real property from the transferor.

Hence, on October 14, 2003, respondent filed with the BIR a letter claiming refund or tax credit of the amount of P14,140,980.00, representing erroneously paid DST for the taxable year 2001, due to the statutory merger. On the same day, in order to toll the running of the two (2)-year prescriptive period, herein respondent filed its Petition for Review before this Court without waiting for herein petitioner's decision on the said administrative claim.

Respondent contends that under Section 196 of the 1997 Tax Code, DST is imposed only on all conveyances, deeds, instruments or writings where realty sold shall be conveyed to a purchaser or purchasers and in a statutory merger, the transferee does not "buy" or "purchase" real property from the transferor. Accordingly, its payment of the DST on the transfer of assets as a result of the statutory merger has no basis.

Petitioner, on the other hand, argues that Section 196 of the 1997 Tax Code covers all transfers of real property for a valuable consideration, because it speaks of real property being "granted, assigned, transferred or otherwise conveyed." While the law also uses the terms "sold" to a purchaser," these specifically refer to the

77

transaction of sale. There are transactions other than sale where title to real property is transferred for a valuable consideration. In the case at bar, the entire assets of the "Absorbed Corporations" were transferred to respondent in consideration for the latter's shares of stock.

In its Decision dated January 6, 2006, the CTA Second Division ordered petitioner to refund to respondent the amount of P14,140,980.00 representing erroneously paid DST. On January 27, 2006, petitioner filed a Motion for Reconsideration which was likewise denied via a Resolution dated April 4, 2006.

On April 21, 2006, petitioner received the Resolution dated April 4, 2006 denying the Motion for Reconsideration. On May 4, 2006, within the period of appeal, petitioner filed a Motion for Extension of fifteen (15) days from May 6, 2006 or until May 21, 2006 within which to file the Petition for Review, which was granted by this Court.

Hence, on May 19, 2006, petitioner filed this Petition for Review *En Banc* raising the sole issue of "Whether or not respondent is entitled to the refund/tax credit of the amount of P14,140,980.00 allegedly representing erroneously paid documentary stamp tax (DST) for taxable year 2001 in connection with the transfer of the entire assets from Sugarland Beverage Corporation, SMC Juice, Inc., and Metro Bottled Water Corporation to petitioner La Tondeña Distillers, Inc."

After considering and evaluating all the arguments and evidence presented and the applicable laws and jurisprudence, the Court *En Banc* finds the instant Petition for Review unmeritorious.

Merger is a form of corporate re-organization of two or more corporations whereby they merge into one or single corporation, which is one of the constituent corporations, one disappearing or dissolving and the other surviving (**Agpalo's Legal Words and Phrases**, *1997 ed., page 459* and **Section 76** of the Corporation Code).

Among the effects of such merger is that all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, **shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed** (*Section 80 (4), Corporation Code*).

Based on the foregoing, all property, real or personal, and all interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving or consolidated corporation without further act or deed or by "operation of law", which term is defined as "effected by some positive legal rule or amendment" (**Black's Law Dictionary**, *p. 182, 5th Edition, 1979*).

As correctly held by the CTA Second Division, in cases of mergers of corporations as in this present case, Section 196 is inapplicable. Here, there is no "purchaser" or "buyer" of real property contemplated by law, inasmuch as the real properties subject of the merger were merely absorbed by the petitioner as a legal and logical consequence of the merger. The transfer of real properties was neither a sale nor was it a conveyance of real property for a consideration in money or money's worth.

This view is corroborated by the pertinent provisions of **Republic Act No. 9243** (An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code), particularly, **Section 9**, which amends **Section 199 of the 1997 NIRC**. The same is hereunder quoted for easy reference, to wit:

> "**Sec. 9.** Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:
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> '**SEC. 199. Documents and papers not subject to stamp tax.** — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

79

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(m) Transfer of property pursuant to Section 40 (C)(2) of the National Internal Revenue Code of 1997, as amended.'

xxx xxx xxx"

Section 40(C)(2) of the 1997 NIRC reads as follows:

"**SEC. 40. Determination of Amount and Recognition of Gain or Loss.** —

xxx xxx xxx

(C) Exchange of property. —

(1) xxx

(2) Exception — No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation —

(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property."

Clearly, the above statute removes doubts that the transfers of real properties in pursuance of a merger or consolidation are not subject to documentary stamp taxes.

It is noteworthy that this issue is not one of first impression. This Court explained in the case of **Pilipinas Shell Petroleum Corporation vs. Commissioner**

of Internal Revenue, *CTA Case No. 6477, April 30, 2003*, the reason behind the pronouncement that DST is not imposable in the case of transfers of property as a result of a statutory merger, in the following manner:

> ". . . the obligation to pay DST is based on the voluntary action of the person performing the act or engaging in the activity which is subject to DST. Therefore, the DST imposed on the transfer of real property should not apply to a statutory merger where real property of the absorbed corporation is automatically vested in the surviving corporation by operation of law, without any further act or deed, rather than by some voluntary act or deed on the part of the taxpayer concerned.
>
> The petitioner correctly pointed out that this conclusion is consistent with BIR Rulings dated October 24, 1954 and May 14, 1973, where the BIR ruled that the transfer of certificates of stock by operation of law is not subject to DST. The BIR Ruling of May 14, 1973 cited the case of U.S. vs. Seattle-First National Bank, 321 U.S. 583 (1944), where the U.S. Supreme Court held that the transfer of title to stocks owned by a bank or held by it as a fiduciary, and of title to real estate, as a result of the consolidation of banks under the U.S. National Banking Act, is one 'by operation of law' and, therefore, not subject to DST. . . .
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> xxx xxx xxx
>
> As correctly observed by petitioner, the provision on imposition of stamp tax on conveyance of real property cited in Seattle-First National Bank is identical to Section 196 of the 1997 National Internal Revenue Code (Stamp Tax on Deeds of Sale and Conveyances of Real Property). Thus, applying the U.S. Supreme Court's ruling in Seattle-First National Bank to petitioner's case, the transfer of real property from SPPC to petitioner was not effected by or dependent on any voluntary act or deed of the parties to the merger. Nor was any voluntary deed, conveyance, assignment or other instrument utilized or necessary. Upon the effective date of the merger, the real properties were automatically transferred to and vested in petitioner without further act or deed. The transfer occurred solely and automatically by virtue of Section 80(4) of the Corporation Code. In short, title to real property passed to and vested in petitioner by operation of law pursuant to the merger. There was, in effect, only absorption by the surviving corporation (petitioner), by operation of law, of real property of the absorbed corporation (SPPC)."

The afore-quoted explanation by this Court remains valid and merits the application to the present case.

To recapitulate, laws and jurisprudence prove that the transfer of the assets and real properties from the "absorbed corporations"' to the respondent are not subject

81

to DST. The same were not conveyed to or vested in respondent by means of any deed, instrument or writing. Neither were the subject real properties "sold" or vested in a "purchaser or purchasers" within the ordinary meaning of these terms. By operation of law, said real properties were automatically vested in respondent without "further act or deed". Accordingly, no DST is due and demandable against respondent arising from the merger.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on January 6, 2006 and Resolution dated April 4, 2006, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

82

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice