REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6149

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 0 5 2003

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DECISION

This is a Petition for Review seeking for the cancellation of the deficiency documentary stamp tax (DST) assessment, in the amount of P1,068,412,560.00, issued by Respondent Commissioner of Internal Revenue against herein Petitioner, in connection with the transfer and conveyance to Petitioner by the Republic of the Philippines of portions of Fort Bonifacio, (herein referred to as the "*Subject Property*") pursuant to Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.

Petitioner is a domestic corporation duly registered and existing under Philippine laws, with office address at Bonifacio Global City, Fort Bonifacio, Taguig, Metro Manila.

Petitioner was originally incorporated as a wholly owned subsidiary of the Bases Conversion Development Authority ("BCDA") for the purpose of, among other developing portions of Fort Bonifacio in accordance with the Fort Bonifacio

Development Plan prepared by the BCDA. The BCDA, upon the other hand, is a wholly-owned government corporation created by Republic Act ("R.A.") No. 7227 for the purpose of accelerating the conversion of military reservations/camps, which include Fort Bonifacio, into alternative productive uses and raising funds through the sale of portions of said military reservations/camps in order to promote the economic and social development of the country in general.(Paragraph 1.03, Stipulation of Facts, Documents and Issue)

On February 8, 1995, by virtue of R.A. No. 7227 and Executive Order No. 40, dated December 8, 1992, which was issued by the President of the Philippines to implement the provisions of Section 8 of R.A. No. 7227 authorizing the President to dispose of, among others, portions of Fort Bonifacio, the Republic of the Philippines ("Republic") sold, conveyed and transferred to Petitioner portions of Fort Bonifacio ("Subject Property") for a total consideration of P71,227,503,200.00.(Paragraph 1.04, Stipulation of Facts, Documents and Issue)

On September 15, 1998, the office of Respondent Commissioner of Internal Revenue issued Letter of Authority No. 19135 authorizing the examination of Petitioner's books of accounts and other accounting records covering all internal revenue liabilities for taxable year 1995. (Paragraph 1.09, Stipulation of Facts, Documents and Issues)

As a result of the investigation, Petitioner was assessed for deficiency documentary stamp tax ("DST") in the amount of P1,068,412,560.00 pursuant to a final notice of assessment covered by Assessment No. ST-DST-95-0131-99 dated December 10, 1999. The said assessment was received by Petitioner on December 27, 1999.(Paragraph 1.09, Stipulation of Facts, Documents and Issues)

The deficiency DST was based on the sale of the Fort Bonifacio property by the Republic to Petitioner on February 8, 1995 which, according to the BIR, is subject to DST pursuant to Section 196 of the then National Internal Revenue Code ("NIRC") and BIR Ruling No. 34 (B) 000-00-19-95 dated February 13, 1995.(Paragraph 1.10, Stipulation of Facts, Documents and Issues)

On January 6, 2000, or within the reglementary period, Petitioner administratively protested the said assessment by filing a request for reconsideration.(Paragraph 1.11, Stipulation of Facts, Documents and Issues)

As of the date of the Petition in this case, Respondent had taken no action on Petitioner's administrative protest of January 6, 2000.(Paragraph 1.14, Stipulation of Facts, Documents and Issues)

Petitioner's request for reconsideration was filed with the Respondent Commissioner on January 6, 2000 and the 180-day period provided for in Section 228 of the NIRC expired on July 4, 2000. Thus, Petitioner had 30 days from July 4, 2000, or up to August 3, 2000, within which to file an appeal with the Court of Tax Appeals.(Paragraph 1.15, Stipulation of Facts, Documents and Issues)

True enough, Petitioner, on August 2, 2000 filed a Petition for Review with this Court praying for the cancellation of the final assessment notice covered by Assessment No. ST-DST-95-0131-99 dated December 10,1999 issued by the Bureau of Internal Revenue against Petitioner and declaring that Petitioner is not liable to pay the assessed deficiency DST amounting to P 1,068,412,560.00.

The legal basis relied upon by Respondent in issuing the deficiency documentary stamp tax assessment against the Petitioner is Section 196 of the old NIRC, herein quoted in part as follows:

> ***"Section 196. Stamp tax on deed of sale and conveyance of real property.-*** On all conveyances, deeds, instruments or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted assigned or transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:
>
> x x x x x x

Two points of contention have been raised by the Petitioner in asserting that the transaction is not subject to DST.

First, the subject property was transferred and conveyed to the Petitioner by virtue of the Special Patent issued by the President of the Republic of the Philippines, on February 7, 1995, the pertinent portion of which reads as follows:

> *"NOW, THEREFORE, KNOW YE, that by authority of the Constitution of the Philippines, and in conformity with the provisions thereof and of Executive Order No. 40, dated December 8, 1992, supplemented by Commonwealth Act No. 141, as amended, there is hereby granted and conveyed unto the FORT BONIFACIO DEVELOPMENT CORPORATION ("FBDC"), the tracts of land of the public domain situated in Barangay Fort Bonifacio, Municipality of Taguig, Metro Manila, identified and more particularly described as Lot Nos. 1, 2 and 6, Swo-00-001265, containing an area of SIX HUNDRED SEVENTY THREE THOUSAND NINE HUNDRED SEVENTY NINE (673,979) SQUARE METERS, and Lot Nos. 17, 21, 22 and 23, Swo-00-001266, containing an area of ONE MILLION FOUR HUNDRED NINETY SEVEN THOUSAND EIGHT HUNDRED THIRTY SEVEN (1,497,837) SQUARE METERS x x x.* ***(Exhibit C, paragraph 5, CTA records p. 128)***

Petitioner asserts that the subject property, having been transferred by virtue of the aforesaid Special Patent, is not subject to the DST. Petitioner contends that Section 196 of the old Tax Code, which is the basis of the Respondent in the imposition of the DST, does not apply to the foregoing transaction, since the wordings of the said law categorically excludes transfers and conveyances made under "grants, patents, or original certificates of adjudication" issued by the Government. On that basis, Petitioner opined that Section 196 of the old NIRC does not cover the transfer and conveyance of real property from the Government to the Petitioner, hence no DST may be imposed on the said transaction.

Second, Petitioner asseverates that the subject transaction between the Government and the Petitioner is exempt from all kinds of taxes, including documentary stamp tax. This exemption, according to Petitioner, was confirmed and bolstered by Republic Act No. 7917, which was passed by Congress on February 24, 1995 and amended by Republic Act No. 7227 (Bases Conversion and Development Act), particularly Section 8 thereof providing for the distribution and appropriation of the proceeds of the sale of Metro Manila military camps. Section 1 of R.A. No. 7917 provides in part, as follows:

> "Section 1. Paragraph (d), Section 8 of Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992, is hereby amended to read as follows:
>
> x x x x x x
>
> "x x x The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds:

x x x x x x

> The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees."

As patently manifested in the above cited provision, Petitioner contends that it was the intention of Congress to free the proceeds of the sale from any taxes that would substantially diminish them, considering that such proceeds are intended to fund the projects listed in Section 8 of R.A. No. 7227, as amended by R.A. No. 7917. The imposition of any tax thereon, according to Petitioner, would in effect result in the conversion of a portion of the proceeds of the sale from its intrinsic nature as funds appropriated for purposes enumerated in Section 8 of R.A. No. 7227, as amended by R.A. No. 7917, into and as part of the general appropriations fund of the government disposable for purposes entirely different from what was intended by Congress. Thus, Petitioner believes that to impose the DST on the sale of the land will unduly increase the cost of the land, to the detriment of the social and economic objectives sought to be attained by the Government.

Petitioner further argues that R.A. No. 7917 was intended to apply retroactively to the subject transaction. Although R.A. 7917 was enacted on February 24, 1995, and the subject transaction took place on February 8, 1995, the said amendatory law was specifically enacted to correct and address the need to redistribute the proceeds from the sale of military camps in order to meet the greater and wider needs of public service. Petitioner even pointed out that at the time of the deliberation, Congress was fully aware that the sale of the subject property to Petitioner had taken place. Thus, it can be inferred from the surrounding circumstances that R.A. 7917 was a curative law specifically intended by its authors to be applied retroactively.

On October 5, 2000, Respondent filed an Answer to the instant Petition for Review, and raised the following Special and Affirmative Defenses *(CTA records, pp.71-72)*, to wit:

> "5. The Deed of Absolute Sale With Quitclaim executed on February 8, 1995 between the Republic of the Philippines and petitioner transferring to the latter the real property mentioned therein is subject to the documentary stamp tax imposed under Section 196 of the Tax Code (BIR Ruling No. 019-95 dated February 13, 1995).
>
> 6. Since the Republic of the Philippines is exempt from the documentary stamp tax imposed under Section 196 of the Tax Code, petitioner, who is not exempt, is directly liable for the tax pursuant to Section 173 of the Tax Code.
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> 7. The tax exemption provided under R.A. No. 7917 extends only to the proceeds of the sale of Metro Manila military camps. Since the documentary stamp tax is not a tax on the proceeds of the sale but a tax "levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments" (Philippine Home Assurance Corp. vs. Hon. Commissioner of Internal Revenue, et al., G.R. No. 119446, January 21, 1999), said exemption does not include the documentary stamp tax on the deed covering the sale.
>
> 8. R.A. No. 7917 was enacted on February 24, 1995, while the Deed of Absolute Sale with Quitclaim was executed on February 8, 1995. There being no express provision for the law's retroactive application, the tax exemption provided therein cannot be applied retroactively.
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> 9. Tax exemptions are construed strictly against taxpayers (Collector vs. Manila Jockey Club, 98 Phil. 670).
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> 10. The assessment was issued in accordance with law and regulations.
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> 11. All presumptions are in favor of the correctness of tax assessments (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671).

Considering the foregoing arguments and disquisitions of both Parties, this Court is now tasked to resolve the following issues stipulated upon by the Parties, thus:

1. *Whether Section 196 of the National Internal Revenue Code, which imposes a stamp tax "[o]n all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers", applies to the transfer and conveyance of the Subject Property by the Republic of the Philippines to petitioner.*

   1.1 *Corollary to the foregoing issue, whether the proviso in Section 173 of the NIRC that "whenever one party to the taxable document enjoys exemption from the tax x x x, the other party thereto who is not exempt shall be the one directly liable for the tax", is applicable to the transaction in question.*

2. *Whether the transaction subject of the instant case is exempt from the documentary stamp tax.*

   2.1 *Corollary to the above, whether the last sub-paragraph of Paragraph (d), Section 8, of Republic Act No. 7227, as amended by Republic Act No. 7917, which provides that the proceeds of the sale shall be exempt from all forms of taxes and fees, applies to the subject transaction.*

   2.2 *Likewise corollary to the above, whether the last sub-paragraph of Paragraph (d), Section 8, of Republic Act No. 7227, as amended by Republic Act No. 7917, may be applied retroactively.*

Before proceeding to the pivotal part of the instant controversy, this Court finds it proper to first discuss the factual background surrounding the case at bar.

On March 13, 1992, R.A. 7227 was enacted to accelerate the conversion of military reservations into alternative productive uses; to create the Bases Conversion and

Development Authority (BCDA) and to raise funds through the sale of portions of military reservations specified therein. Said law likewise authorized the President to sell said lands, which are declared alienable and disposable. The proceeds of the said sale were specially earmarked by the said law for various purposes. On February 24, 1995, R.A. 7917 was enacted specifically amending Section 8 of R.A. 7227 with regard to the appropriation of the proceeds of the sale of military camps expanding the coverage of its use. Thus, by virtue of R.A. 7227 and the provisions of Executive Order no. 40, the President then sold, conveyed and transferred the portion of the Fort Bonifacio to herein Petitioner for a total consideration of P 71,227,503,200.00. A special patent was issued on February 7, 1995 and a deed of sale was executed on February 8, 1995 to evidence the transaction. This now became the subject of the controversy, after the BIR assessed herein Petitioner of DST on the deed of sale executed between the Parties.

After a circumspect study of the facts, arguments and law applicable to this case, this Court finds the assessment to be in order.

We do not subscribe to the argument of the Petitioner that the transfer and conveyance of the subject property is not subject to the DST under Section 196 of the NIRC because said property was transferred by way of a Special Patent, which is specifically excluded from the coverage of the said section.

We do not deny the fact it is the issuance of the Special Patent which prompted the conveyance and transfer of the subject property. Because of the peculiar nature of the land involved, the President, by virtue of the authority vested in him by RA 7227, issued a Special Patent to dispose of the subject land to be transferred to a private individual. A patent is an instrument by which a state or government grants public lands to an individual (Black's Law Dictionary, Sixth Edition). The day after the issuance of the said special patent, a deed of sale was executed between the government and herein Petitioner. Respondent imposed a DST on this deed of sale, which is now being contested by the Petitioner.

In the case at bar, two instruments were executed. The issuance of the patent, which according to Petitioner is the operative act by which the beneficial title was conveyed, and the other, the execution of the deed of sale which embodies the exchange of subject matter and consideration between the parties. From their own peculiar nature, said instruments should be treated distinctively and separately from the other, as far as their tax consequence is concerned. It is significant to note that what is being taxed by the Respondent, is the deed of sale and not the Special Patent issued by the President. As can be inferred from the language used in the said documents, both have the tenor of conveying and transferring the subject property, thus:

<u>Special Patent</u>

> *"x x x there is hereby **granted and conveyed** unto the Fort Bonifacio Development Corporation (FBDC), the tracts of land of the public domain x x x"*

<u>Deed of sale</u>

> *"For and in consideration of the total amount of x x x, the Seller hereby **irrevocably and absolutely sells, conveys and transfers** the subject property, in favor of the Buyer x x x"*

Both instruments are equal in force and in effect. One is not necessarily subservient to the other. Their difference lies on their taxability. If the law expressly exempts the patent from DST, then so be it. But Petitioner should not dwell on this fact alone as to altogether exempt itself from payment of DST. Exemption of a particular document does not necessarily mean exemption of the other from DST.

We agree with the Respondent that the document embodying the contract of sale between the parties is subject to DST. This is even buttressed by Section 196 of the Tax Code, where a deed of sale is expressly subjected to DST. What is taxed in this particular case is the privilege to transact the contract of sale, which is effected through the issuance of a specific document such as the deed of sale. Thus, as held by the Court of Appeals in the case of ***Philippine Home Assurance Corporation, et al vs. Court of Tax Appeals, SP-32531, April 27, 1994,*** and affirmed by the Supreme Court in ***Philippine Home Assurance Corporation vs, The Hon. Commissioner of Internal Revenue, GR No. 4208-4211, January 21, 1999,***

> "The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x This means then that the documentary stamp tax accrues when the privilege is exercised. As the respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which it described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document."

In the same manner, the DST is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. As Justice Learned Hand pointed out in one case, documentary stamp tax is levied on the document and not on the property which it described. ***(Commissioner of Internal Revenue vs. Heald Lumber Co., 10 SCRA 372, 1964 citing Empire Trust Co vs. Hoey, 103 F 3d, 430)***

Predicated on the foregoing dictum, DST, with respect to the deed of sale, is levied upon the privilege of entering into a transaction, as effected through the execution of the said deed. It is imposed, regardless of the money received or property conveyed, for what is taxed is the privilege, opportunity and the facility to enter into a transaction, the transaction being the contract of sale.

Anent the issue of whether Section 173 of the NIRC is applicable to the transaction in question, we rule in the affirmative.

Documentary stamp tax is an indirect tax, which is susceptible of being shifted and thus it can be paid indifferently by either party, such that if one party to the transaction enjoys exemption from the tax, the other party thereto who is not exempt shall be the one directly liable to pay the tax. This is true in the case at bar. Since the other party is the government, then the burden to pay the tax should be shouldered by the private party who does not enjoy the said privilege. It must be noted that tax exemption of government entities and the political subdivision of the State seems to be a well settled principle and this exemption from taxation is a matter of public policy ***(51 Am. Jur. 503).*** Suffice it to say in this regard that Petitioner cannot be considered as likewise enjoying this privilege. Although they are a wholly-owned subsidiary of BCDA which is a government agency created by law, the fact remains that they are still considered a private entity duly incorporated in accordance with the Corporation Code of the Philippines *(Exhibit A).*

With regard to the second issue, we rule in the negative.

We do not agree with the contention of the Petitioner that the transaction subject of the instant case is exempt from all kinds of taxes, including the documentary stamp tax, pursuant to the amendatory law (R.A. No. 7917), the pertinent portion of which reads as follows:

x x x x x x

"The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore exempt from all forms of taxes and fees."

Contrary to the assertion of the Petitioner, the proceeds of the sale will not be diminished by the payment of the DST. The law explicitly provides "x x x the proceeds from any sale, ***after deducting all expenses related to the sale,*** of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided x x x". What is appropriated by law for a certain purpose is merely the proceeds of the sale. The term "proceeds", means income, yield, receipts x x x or other thing of value arising or obtained by the sale of property. (Blacks Law Dictionary, 6th edition). Proceeds do not include the cost, or expenses as these were already excluded therefrom. The DST imposed upon the subject transaction is not part of the proceeds but should be part of the expenses, which should have been anticipated by the parties in the first place.

As regards the retroactive effect of RA 7917, again we do not subscribe to the point propounded by the Petitioner. The proviso contained in the amendatory law (RA 7917) which provides that the proceeds of the sale shall be exempt from all forms of taxes and fees, does not apply to the subject transaction. It is worthy to stress that R.A.

7917 was enacted on February 24,1995 and the subject transaction took place on February 8, 1995. It is the contention of the Petitioner that R.A. 7917 was intended to apply retroactively to the subject transaction as it takes the guise of a curative statute intended to correct and address the need to redistribute the proceeds from the sale of military camps in order to meet the greater and wider needs of public service. According to Petitioner, at the time of its deliberation, Congress was fully aware that the sale of the subject property to Petitioner had already taken place. It was in fact the only transaction from which, proceeds from the sale of a military camp were realized by the Republic. Thus, Petitioner contends that R.A. 7917 is a curative statute intended by its authors to be applied retroactively.

Said argument deserves scant consideration.

It is a well-settled rule of statutory construction that statutes are to be construed as having only prospective operation, unless the intendment of the legislature to give them a retroactive affect is expressly declared or is necessarily implied from the language used ***(Montilla vs. Sagales, 24 Phil 220, 1913).*** The presumption is that all laws operate prospectively, unless the contrary appears or is clearly, plainly and unequivocably expressed or necessarily implied. In every case of doubt, the doubt will be resolved against the retroactive operation of law. The presumption applies whether the statute is in the form of an original enactment, an amendment or a repeal ***(Commissioner of Internal Revenue vs. Fil;ipinas Campania de Seguros 107 Phil 1055, 1960).***

As can be gleaned from the minutes of the Senate deliberations on the matter, nothing was ever said about the law being retroactively applied to the recently concluded transaction involving the sale of Fort Bonifacio. Neither do the words therein take the guise of a curative statute. For all intents and purposes, a curative statute is a form of retrospective legislation which reaches back into the past to operate upon past events, acts or transactions in order to correct errors and irregularities and to render valid and effective many attempted acts which would otherwise be ineffective for the purpose intended ***(Development Bank of the Philippines vs. Court of Appeals, 96 SCRA 342, February 28, 1980).*** In the instant case, nothing could be said with respect to any errors or irregularities, which attach to the transaction that took place. The contract between the government and herein Petitioner was a valid contract, devoid of any defect. There can be no doubt that RA 7917 which amended Section 8 of RA 7557 looks forward and was not intended to be applied retroactively as to impair vested rights.

Exemptions from taxation are highly disfavored in law, and he who claims an exemption from his share of the common burden in taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken ***(Surigao Consolidated Mining Co., Inc., vs. Collector of Internal Revenue, et al, L-14878, December 26, 1963).*** The law frowns upon exemption from taxation. For this reason, statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The basis for the rule of strict construction is to minimize the different treatment and foster impartiality, fairness, and equality of treatment among taxpayers ***(Maceda vs. Macaraeg 197 SCRA 771, 1991).***

As aptly ruled by the Supreme Court in the case entitled ***Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671 November 25, 1986,*** *citing Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 965,974),* "All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.

As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner to show clearly that the assessment was erroneous, in order to relieve himself from it *(51 AM Jur, pp 620-621)."*

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. Petitioner is hereby **ORDERED** to **PAY** the amount of P1,068,412,560.00 representing the deficiency documentary stamp tax for the year 1995.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge