REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SIGUION REYNA, MONTECILLO & ONGSIAKO,
Petitioner,

C.T.A. EB NO. 152
(C.T.A. Case No. 6613)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 2 2 2007

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review assailing the Decision dated August 18, 2005 and the subsequent Resolution dated December 6, 2005, both issued by the Second Division of the Court ("Court in Division"). The Court in Division denied the claim for refund of petitioner in the amount of

P592,791.75 representing petitioner's overpaid documentary stamp taxes (DST) on its purchase of office condominium units located at the Citibank Centre, 8741 Paseo de Roxas, Makati City.

Antecedent Facts

As aptly summarized by the Court in Division, the antecedent facts are as follows:

> "Petitioner, Siguion Reyna, Montecillo and Ongsiako Law Offices, is a general professional partnership (GPP) organized and existing under and by virtue of the laws of the Philippines with office address at 4th and 6th Floors, Citibank Center, 8741 Paseo de Roxas, Makati City. Respondent, Commissioner of Internal Revenue, is the government official in charge of the administration and enforcement of the internal revenue laws of the Philippines with office address at the BIR National Office Building, East Triangle, Diliman, Quezon City.
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> Petitioner purchased office condominium units at the 4th and 6th floors of the Citibank Center, Paseo de Roxas, Makati City in the total amount of P53,064,750.00. On March 8, 2001, petitioner filed with the Asset Valuation Division a request to revalue the zonal values of subject office condominium units averring that the zonal values provided under the Department of Finance Order No. 64-97 dated June 6, 1997 are no longer reflective of the actual market value of the office units purchased *(Annex "A", Petition for Review).*
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> Without waiting for any response from the respondent with regard to its request for revaluation, petitioner paid the amounts of P6,943,815.00 and P1,388,775.00 on March 12, 2001, representing the capital gains taxes and documentary stamp taxes, respectively, on its purchase of the subject condominium units, for which taxes were computed based on the units' zonal value of P92,584,200.00 *(par 4, Joint Stipulation of Facts and Issues, Records, pp. 63-65).*
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> On March 10, 2003, petitioner filed a claim for refund with the office of the respondent for the allegedly overpaid documentary stamp taxes. And subsequently on March 12, 2003, petitioner filed this instant petition before it could be barred by prescription, pursuant to Section 229 of the National Internal Revenue Code of 1997.
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> In the Answer filed on April 29, 2003, respondent alleges, among others, that petitioner's claim for refund is still subject to administrative routinary investigation/examination by the respondent's Bureau; that the taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable; petitioner's claim for refund in the amount of P592,791.75 as alleged erroneously paid capital gains tax and documentary stamp tax were not fully substantiated; and that it is

respondent who is authorized under the Tax Code to divide the Philippines into different zones or areas or to determine the fair market value of real properties located in each zone or area, pursuant to Section 6 (E) of the 1997 Tax Code."

The Ruling of the Court in Division

The Court in Division ruled that petitioner is not entitled to a refund in the amount of P592,791.75 representing petitioner's allegedly overpaid documentary stamp taxes (DST) on its purchase of office condominium units located at the Citibank Centre, 8741 Paseo de Roxas, Makati City for the following reasons:

1. The zonal values adopted by the Bureau of Internal Revenue (BIR) at the time of the purchase of the office condominium units, unless revised or amended in accordance with law by the Commissioner of Internal Revenue, should still be used for purposes of arriving at the DST paid by petitioner, pursuant to the provisions of Section 6(E) of the 1997 Tax Code.
2. When the condominium units were purchased, there was already a re-evaluation or revision of the zonal values of real property in Makati City, more particularly the area where the subject real property of this case lies, pursuant to Department Order No. 64-97 dated June 6, 1997. This revised zonal valuation was the basis for computing the DST that petitioner paid, being the higher value than the contracted purchase price stated on the subject Deed of Absolute Sale, which was never presented in Court.

3. To consider petitioner's argument that the selling price as stated in the Deed of Sale should be used as the basis for the computation of the DST would be violative of the Section 196 of the 1997 Tax Code and Section 6(E) of the 1997 Tax Code.

The dispositive portion of the assailed Decision of the Court in Division is quoted below:

> "**IN VIEW OF THE FOREGOING**, the subject Petition for Review is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED**."

Undaunted, petitioner filed a Motion for Reconsideration on September 7, 2005. The Court in Division denied the motion in the assailed Resolution dated December 6, 2005.

The Issues

Hence, this instant petition which hinges on the following grounds:

> "I. PETITIONER MAINTAINS THE VIEW THAT BY AFFIRMING THE RESPONDENT'S APPLICATION OF THE 1997 ZONAL VALUATION FOR PURPOSES OF DOCUMENTARY STAMP TAX TO A PURCHASE MADE IN THE YEAR 2001, THE 2ND DIVISION OF THE HONORABLE COURT, IN EFFECT, IS REWARDING THE RESPONDENT COMMISSIONER FOR HIS INACTION
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> II. THE 2ND DIVISION OF THE HONORABLE COURT ERRED WHEN IT OVERLOOKED THE FACT THAT THE DETAILS OF PETITIONER'S PURCHASE OF SUBJECT CONDOMINIUM UNITS WERE ALREADY STIPULATED ON BY THE PARTIES"

The Ruling of the Court En Banc

The petition is bereft of merit.

Anent the first ground, petitioner disagrees with the ratiocination of the Court in Division that the zonal values adopted by the BIR at the time of the purchase of the subject condominium units should still be used for purposes of DST. Petitioner avers that by doing so, the Court in Division, in effect, rewarded the respondent for the latter's disregard of his mandate provided under Section 6 (E) of the 1997 Tax Code.

We disagree.

The rule is that DST on Deeds of Sale and Conveyances of real property is ascertained either on: (1) the amount of consideration or value received or contracted to be paid; or (2) the fair market value, whichever is higher, as provided in Section 196 of the 1997 Tax Code, to wit:

> "***SEC. 196. Stamp Tax on Deeds of Sale and Conveyances 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 land, tenement 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, there shall be collected a documentary stamp tax, at the rates herein below prescribed, **based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher**: . . . " (Emphasis supplied)

Pursuant to the afore-quoted provision, the fair market value of taxable real property is determined in accordance with Section 6(E) of the 1997 Tax Code, which provides:

> "***SEC. 6 Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement***. —
>
> xxx xxx xxx
>
> ***(E) Authority of the Commissioner to Prescribe Real Property Values*** — The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:
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> (1) the fair market value as determined by the Commissioner; or

(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors."

Petitioner posits that the zonal valuations appearing in Department Order No. 64-97 dated June 6, 1997[1] are no longer reflective of the fair market values of real properties in Makati City. Petitioner urges the Court *En Banc* to take judicial notice of the fact that after 1997 and 1998, prices of real estate went down.

The law is clear. Our plain duty is to apply it as written. In the case at bar, as required under Section 196 of the 1997 Tax Code, the DST paid by petitioner was based on the fair market value of the condominium units which is higher than the contracted selling price. The fair market value involved in the present case is based on the revised zonal valuation of real properties in Makati City pursuant to Department Order No. 64-97 dated June 6, 1997 issued by the Secretary of Finance based on the recommendation of the Commissioner of Internal Revenue.

Relative to the foregoing and as correctly pointed out by the Court in Division, the prevailing zonal values adopted by the BIR at the time of the purchase of the condominium units, unless revised or amended in accordance with law by the Commissioner of Internal Revenue, must be used for purposes of arriving at the DST paid by petitioner. It is the respondent Commissioner of Internal Revenue, who is vested with appropriate authority to determine the fair market value of real properties within a defined zone or area. It is also the respondent Commissioner who is authorized to divide the Philippines into

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[1] Implementation of the Revised Zonal Values of Real Properties in the City of Makati under Revenue District Office No. 50 (South Makati), Revenue Region No. 8 (Makati) for Internal Revenue Tax Purposes, effective on January 13, 1998.

different zones, upon consultation with competent appraisers, both from the public and private sector, and to determine the fair market value of real properties located in each zone or area or what we commonly call, zonal valuation.

Moreover, considering that the determination of the fair market values of real properties is primarily an executive prerogative, courts may not inquire into the wisdom or unwisdom in the exercise thereof. In this wise, the Supreme Court has ruled:

> "**Even with the best of motives, the courts of justice have no right to encroach on the prerogatives of the legislative and executive officials as long as it has not been shown that they have acted without or in excess of jurisdiction or with grave abuse of discretion.** Judicial intervention, and much less usurpation, cannot be the panacea for every legal problem hopefully brought to us for resolution. Under the doctrine of separation of powers, the courts can only apply the law and have no authority to enact or execute them. The last two functions belong to the political departments of the government and cannot be arrogated by the judiciary."[2] (Emphasis supplied)

Furthermore, regularity in the performance of official duties is presumed[3] and in the absence of competent evidence to rebut this presumption, We are duty bound to uphold this presumption. When the law imposes certain duties and obligations, it will be presumed that such duties and obligations have been performed unless it is expressly made to appear to the contrary. All things are presumed to have been rightly and duly performed until there is proof to the contrary.[4] In this case, no sufficient evidence was presented to show that the government valuation is erroneous. It must therefore be regular.

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[2] Republic of the Philippines v. Francisco Bacus, G.R. No. 73261, August 11, 1989.
[3] Rules of Court, Rule 131, section 3(m).
[4] Evidence, Ricardo J. Francisco, Third Edition, 1996, page 420, *citing U.S. v. Escalante, 36 Phil. 743.*

In this regard, We quote with approval the disquisition on this matter by the Court in Division in its assailed Resolution:

> "The duty and authority of the Commissioner to prescribe real property values under Section 6(E) of the 1997 Tax Code is not without any consultation with competent appraisers from both the private and public sectors. Under this authority, the determination of the tax base is not left to the discretion of one party alone, considering that the determination of real estate zonal values requires sufficient knowledge, if not expertise, in the field. And to give full discretion to only one party, opens the possibility to abuse and discrimination.
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> Before the assailed Department Order No. 64-97 dated January 13, 1998 took effect, the required consultations with the various private and public appraisers, along side with the Commissioner of the Bureau of Internal Revenue were complied with. It must be noted that said Department Order was issued for the purpose of re-valuing or revising the zonal values of real properties located in Makati City, more particularly, the area where the subject real property of this case lies.
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> Absent an appropriate determination by competent appraisers that the zonal valuations established are highly unrealistic or not done according to the procedures laid down by law, the same may not be arbitrarily disturbed considering that the determination of the zonal values of the real properties in question requires utmost scrutiny taking into consideration several factors affecting the area where the real property is located.
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> In this regard, petitioner failed to overturn the presumption of regularity in the performance of official duties. Therefore, petitioner cannot just assume the right to lay the blame on the Commissioner for something the latter had unquestionably performed, being the officer tasked to do so.
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> If there was really a failure on the part of the Commissioner to perform his duties, as argued by the petitioner, then it is up to the petitioner to prove such allegation. Absent such proof, petitioner must avoid making unacceptable observations with regard to respondent's, as well as, this Court's duties."

As to the second ground, petitioner contends that the Court in Division erred when it overlooked the fact that the details of petitioner's purchase of the subject condominium units were already stipulated on by the parties. Petitioner submits that inasmuch as the parties had already stipulated on the sale of the subject condominium units, further presentation of the Deeds of Sale are no longer necessary.

Assuming *arguendo* that the Court in Division disregarded the joint stipulation on the sale of the subject condominium units, the fact remains that petitioner is not entitled to a refund, as ruled by the Court in Division to wit:

> "Admittedly, petitioner paid documentary stamp taxes on its purchase of the office condominium units located at the 4th and 6th floors of Citibank Center, Paseo de Roxas, Makati City. When these condominium units were purchased, there was already a re-valuation or revision of the zonal values of real property located in Makati City, more particularly the area where the subject real property of this case lies, pursuant to Department Order No. 64-97 dated June 6, 1997. And this revised zonal valuation was the basis for computing the documentary stamp taxes that petitioner paid, being the higher value than the contracted purchase price stated on the subject Deed of Absolute Sale, which, as mentioned earlier, was never presented in court.
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> Petitioner having paid on the basis of either, the correct zonal valuation, or contracted selling price of subject condominium units, whichever is higher, there could therefore be no "excess or overpayment" of documentary stamp taxes.
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> It is important to emphasize at this point that the existing Zonal Values of Real Properties in Makati City were determined and approved after the consultation with competent appraisers from both the private and public sectors and the required public hearing. Hence, the same shall prevail for purposes of determining the proper tax liabilities of the petitioner."

WHEREFORE, finding no reason to reverse the assailed Decision promulgated on August 18, 2005 and the Resolution dated December 6, 2005, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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

ERNESTO D. ACOSTA
Presiding Justice