REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

EUROVERSAL PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9869

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, JJ.

Promulgated:

NOV 20 2020 1:11 pm

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RESOLUTION

MANAHAN, *J.:*

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated 3 August 2020)** posted on September 17, 2020 and received by this Court on October 1, 2020, without respondent's comment, which prays for the reversal and setting aside of the Court's *Decision* dated August 3, 2020 (Assailed Decision) and the grant of its claim for refund of the alleged erroneously paid Capital Gains Tax (CGT) in the amount of Php25,332,102.00.

Petitioner avers that it timely filed its claim for refund and that respondent has no authority to retain in its coffers said CGT after the recission of the Contract to Sell.

Petitioner further avers that respondent's retention of the CGT payment constitutes manifest injustice due to lack of legal and factual basis.

The Court notes that per the factual findings in the Assailed Decision, there was no erroneously paid tax at the time of the payment of said CGT, hence, the filing of the administrative and judicial claim for refund on July 3, 2018 and July 6, 2018, respectively, was out of time, to wit:

> "In this case, petitioner paid the CGT on July 5, 2013. Petitioner therefore had two (2) years therefrom or until July 5, 2015 within which to file both its administrative and judicial claims for refund. Thus, the filing of petitioner's administrative and judicial claims for refund on July 3, 2018 and July 6, 2018, respectively, was beyond the 2-year prescriptive period under Sections 204(C) and 229 of the 1997 NIRC, as amended.
>
> xxx xxx xxx
>
> In the instant case, petitioner had a valid contract with FDC at the time the CGT was paid on July 5, 2013. This Contract to Sell required an initial down payment of thirty percent (30%) of the total selling price. Under Sec. 49(B) of the NIRC of 1997, as amended, and implemented by Revenue Regulations (RR) No. 2-98 as amended by RR 6-2001 and RR 17-2003, any initial payment exceeding twenty five percent (25%) of the selling price will treat such transaction as a cash basis or deferred payment sale and thus the obligation to pay the 6% CGT on the entire selling price falls due....
>
> xxx xxx xxx
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> Based on the foregoing legal provisions, the 6% CGT paid in the instant case was based on the fair market value of the Properties which was higher than the selling price stated in the Contract to Sell. And the manner by which such payment was effected was through the withholding tax system whereby FDC, as the buyer, withheld the amount of P25,332,102.00 and remitted the same to the BIR, pursuant to Sec. 2.57.2 (J) of RR No. 2-98 as amended by RR 17-2003.
>
> Thus, the payment of the CGT in the instant case was neither an erroneous or illegal collection of tax by the respondent."

Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, is very clear that the two (2)-year prescriptive period to file a claim for refund should be strictly followed regardless "of any supervening cause that may arise after payment."

It is true that the Contract to Sell was rescinded as part of the compromise agreement between petitioner and Filinvest Development Corporation (FDC) long after the payment of the subject CGT. However, such is the supervening cause that is referred to under Section 229 of the 1997 NIRC, as amended. Thus, such rescission has no bearing on the prescriptive period.

Petitioner raises the argument that respondent had no right to retain such CGT payment as it runs counter to the principle of *solutio indebiti*. However, consistent with our findings that there was no erroneously paid CGT in the instant case, petitioner was also not aggrieved at all because there was no outflow of assets on its part.

As mentioned in the above cited factual findings, the manner by which such payment was effected was through the withholding tax system whereby FDC, as the buyer, withheld the amount of P25,332,102.00 and remitted the same to the BIR, pursuant to Sec. 2.57.2 (J) of RR No. 2-98 as amended by RR 17-2003.

Such payment was evidenced by the Certification from the BIR dated August 10, 2018. Hence, it was FDC who shelled out the funds and therefore had the right to claim such refund considering that there was a rescission of the Contract to Sell. However, since the seller is the statutory party obliged to pay the CGT and not the buyer, the latter can actually seek reimbursement of this withheld and remitted amount from the petitioner.

In rescission of contract, the very essence is the restoration of the contracting parties to their original state. As held in *Philippines Economic Zone Authority v. Pilhino Sales Corporation*[1], to wit:

> "Respondent correctly notes that rescission under Article 1911 results in mutual restitution. Jurisprudence has long settled that the restoration of the contracting parties to their original state is the very essence of rescission. In *Spouses Velarde*:
>
>> Considering that the rescission of the contract is based on Article 1191 of the Civil Code, mutual restitution is required to bring back the parties to their original situation prior to the inception of the contract. Accordingly, the initial payment of P800,000 and the corresponding mortgage payments . . . should be returned by private respondents, lest the latter unjustly enrich themselves at the expense of the former.
>>
>> Rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return

[1] G.R. No. 185765, September 28, 2016. em

> whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made. (Citations omitted)"

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the Assailed Decision.

WHEREFORE, premises considered, the instant *Motion for Reconsideration (Re: Decision dated 3 August 2020)* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice