REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

BASES CONVERSION AND DEVELOPMENT AUTHORITY, *Petitioner,*	**CTA CASE NO. 8473**
	Members:
-versus-	***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 03 2015 4:20 p.m.

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DECISION

BAUTISTA, J:

The Case[1]

The Petition for Review filed on April 16, 2012, pursuant to Section 7(a)(1)[2] of Republic Act ("RA") No. 1125,[3] as amended by RA No. 9282[4] and RA No. 9503,[5] seeks for the Court to:[6]

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[1] *Records*, CTA Case No. 8473, pp. 31-32.

[2] **Sec. 7.** *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] *Records*, pp. 1-54, with Annexes.

i. issue an order cancelling Formal Assessment Notices (Part I and II)[7] and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111- E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93, and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively; and

ii. grant petitioner Bases Conversion and Development Authority ("BCDA") request for issuance of Certificate Authorizing Registration ("CAR") for the three parcel of land located in Fort Bonifacio, Taguig.

The Parties[9]

Petitioner is a government instrumentality vested with corporate powers created by RA No. 7227, as amended by RA No. 7917 (hereinafter referred to as the "BCDA Charter"), holding office at BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City.

Respondent is vested under the appropriate laws with authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue ("BIR"), including, *inter alia*, the power to decide, approve, and grant claims for refunds and/or issue tax credit certificates of erroneously paid or illegally collected internal revenue taxes[10], and is being represented by legal officers of the Legal Division of Revenue Region No. 8, Makati City, with office address at 2nd Floor Legal Division, BIR Building, No. 313 Senator Gil Puyat Avenue, Makati City.

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[7] *Records*, Exhibits "L", "L-1", "L-2", and "L-3", pp. 911-914.
[9] *Id.*, pp. 107-108.
[10] *Id.*, p. 183.

The Facts

An undated Deed of Absolute Sale, notarized on January 24, 2011, was executed between petitioner, as Vendor and EDC, as Vendee for the sale of three (3) parcels of land located in Fort Bonifacio Global City, Taguig City (hereinafter referred to as the "sale of properties"), in the total amount of Thirty Million One Hundred Seventy-Two Thousand Five Hundred Pesos (PhP30,172,500.00).[11]

To effect transfer of title, on February 7, 2011, petitioner filed a letter addressed to the BIR Revenue District Officer of Revenue District Office ("RDO") No. 44, Ms. Maridur V. Rosario, requesting for the issuance of the CARs on the sale of properties.[12]

On June 6, 2011, petitioner received a reply from respondent through Ms. Rosario imposing the assailed taxes *i.e.* Expanded Withholding Tax ("EWT") and Documentary Stamp Tax ("DST"), as provided in Sections 27(C) and 196 of the 1997 National Internal Revenue Code, as amended ("Tax Code").[13]

On June 14, 2011, petitioner received a Preliminary Assessment Notice ("PAN") from the BIR Assessment Division, BIR Revenue Region 8, Makati City, for the alleged deficiency EWT and DST including penalties on the sale of properties in the total amount of Five Million Three Hundred Seventeen Thousand Seven Hundred Seventy Pesos (PhP5,317,770.00), exclusive of 25% surcharge and interest, broken down as follows:[14]

Basic Deficiency Taxes	
Expanded Withholding Tax	PhP4,052,125.00
Documentary Stamp Tax	1,215,645.00
Total Amount Due	PhP5,267,770.00
Violations of the Tax Code	PhP50,000.00
Total Amount Due	PhP50,000.00
TOTAL	**PhP5,317,770.00**

[11] *Id.*, pp. 815-820.
[12] *Id.*, pp. 825-826.
[13] *Id.*, p. 834.
[14] *Id.*, pp. 835-838.

In reply, petitioner filed a formal protest on the PAN in accordance with Section 3.1.2 of the Revenue Regulations ("RR") No. 12-99 on June 23, 2011.[15]

On August 25, 2011, petitioner received a Formal Assessment Notice ("FAN"), holding it liable to pay deficiency EWT and DST on the sale of properties, along with compromise penalties for violations of Section 58 of RR No. 2-98 and Section 200 of the Tax Code, as shown below:[16]

I. Expanded Withholding Tax			
Basic Deficiency Tax (schedule I)			PhP4,052,125.00
Add:	25% Surcharge	PhP1,013,031.25	
	Interest (02-11-11 to 09-26-11)	501,797.40	1,514,828.65
Total Amount Due			**PhP5,566,953.65**
II. Documentary Stamp Tax			
Basic Deficiency Tax (schedule 2)			PhP1,215,645.00
Add:	25% Surcharge	PhP303,911.25	
	Interest (02-11-11 to 09-26-11)	153,870.68	457,781.93
Total Amount Due			**PhP1,673,426.93**
TOTAL DEFICIENCY TAX			**PhP7,240,380.58**

Nature of Violation		
Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation		
a.	Expanded Withholding Tax on Sale of Real Property	PhP25,000.00
b.	Documentary Stamp Tax on Sale of Real Property	25,000.00
Total Amount Due		**PhP50,000.00**
TOTAL AMOUNT DUE FROM TAXPAYER		**PhP7,290,380.58**

On September 19, 2011, pursuant to Section 3.1.5 of RR No. 12-99, petitioner filed a formal protest letter on the FAN (hereinafter referred to as the "Protest Letter"), [17] which asserts that the proceeds

[15] *Id.*, pp. 839-846.
[16] *Id.*, Exhibits "L", "L-1", "L-2", and "L-3", pp. 911-914.
[17] *Id.*, pp. 918-929.

from the disposition or sale of its properties are exempt from all forms of taxes and fees, as provided in Section 8(d) of its Charter.

On October 20, 2011, petitioner received a letter from the Regional Director of Revenue Region No. 8, Mr. Nestor S. Valeroso, which acknowledged receipt of the Protest Letter; declared that the entire docket together with the Protest Letter will be forwarded to RDO No. 44; and requested for the submission of all the necessary documents to support petitioner's claim to the said RDO within sixty (60) days from the date of filing of the protest pursuant to Section 3.1.5 of RR No. 12-99.[19]

Due to the inaction of respondent on the Protest Letter and in accordance with Section 228 of the Tax Code, petitioner, on April 16, 2012, filed the present Petition for Review with the Court.[20]

On June 25, 2012, respondent filed her Answer through registered mail, interposing the following Special and Affirmative Defenses:[21]

> "4. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 5. Section 228 of the . . . Tax Code partly reads as follows:
>
> 'Sec. 228. Protesting Assessment
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have

[19] *Id.*, p. 1004.
[20] *Id.*, pp. 7-34.
[21] *Id.*, pp. 33-39.

> been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable.'

Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999, provides that [the] taxpayer shall submit the required documents in support of its protest within sixty (60) days from the date of filing of the protest, otherwise, the assessment shall become final and executor[y], and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation. In the instant case, despite the length of time given to herein petitioner, it failed to submit the required documents in support of its protest against the BIR Formal Assessment. Consequently, the same became final, executor[y] and demandable. As such, this Honorable Court has no jurisdiction to act o[n] the instant petition.

6. Further, Section 228 of the [Tax Code], as implemented by Revenue Regulation 12-99 subjects [the] transfer [of] real property by and between BCDA and Energy Development Corp. (EDC) to Expanded Withholding Tax and Documentary Stamp Tax.

7. Further yet, Section 27 (C) of the [Tax Code] states that 'xxxx The provisions of existing special or general laws to the contrary notwithstanding, all corporation, agencies, or instrumentalities owned or controlled by the Government,

except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Amusement Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as imposed by this Section upon corporations or associations engaged in similar business, industry or activity xxx.' Clearly, BCDA is not one of those government entities exempt from tax on their taxable business activities.

8. In a Letter dated July 25, 2011, it was mentioned that 'officials of BCDA had a meeting with Deputy Commissioner Sales together with our Revenue District Officer and Assistant Revenue District Officer to discuss the case and that both parties agreed that a Formal Assessment Notice be issued to cover the deficiency taxes on the basis of Section 27(C) of the Tax Code xxx'.

9. The Deed of Absolute Sale Between BCDA and EDC executed on January 24, 2011 particularly sub-section 1.2 under Section 1 (Responsibility of the Parties) provides that 'the Vendor shall be responsible for, and shall pay, all costs and expenses incurred for, the transfer of the subject properties, including those for the processing of documents and coordination with the government agencies. Likewise, all taxes arising from the transfer and sale of the subject properties shall be for the account of, and shall be paid by, the VENDOR.' Otherwise stated, this provision is a tacit admission of the taxability of the subject transfer.

10. In paragraph 40 of the Petition, the petitioner has even boldly cited Section 173 of the [Tax Code] which provides that 'whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.' However, the subject sub-section 1.2 in the Deed of Absolute Sale Between BCDA and EDC executed in January 24, 2011, even made with the approval of the Office of the Government Corporate Counsel, attempts to prohibit the BIR from enforcing its duties. Verily, a party cannot come to court with unclean hands!!!

11. Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer (*Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, G.R. No. 156040, December 11, 2008*).

12. It is [a] well-settled rule that he who claims exemption should prove by convincing proofs that he is exempted (*Visayan Cebu Terminal Co., Inc. vs. Commissioner, L-19530 & L-19444, February 27, 1965*).

13. Petitioner BCDA failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected."

Resolute to complete the transfer of title to EDC, on September 4, 2012, petitioner paid under protest the alleged "basic" deficiency taxes *i.e.* EWT and DST in the total amount of PhP5,267,770.00[22] that upon payment, the corresponding CARs shall be released by respondent.[23]

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[22] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 183.
[23] *Records*, p. 1104.
Complaint Judicial Affidavit of Lorna A. Enriquez

"11. Q. After the filing of the present case with the CTA, are you aware of any subsequent action done by BCDA in relation to the protested assessment, if you know?

A. Yes. Due to the refusal of the Bureau of Internal Revenue-Revenue District Office (BIR-RDO) No. 44-Taguig and Pateros to issue the Certifications Authorizing Registration (CARs) to the buyer of subject properties, or EDC, BCDA was constrained to pay under the protest the protested assessment for EWT and DST on September 04, 2012.

xxx xxx xxx

13. Q: Why did BCDA pay the EWT and DST under protest, if you know?

A: As far as I know, BCDA negotiated with the BIR to issue the CARs because of the pressure imposed by the buyer of the properties, or the EDC, for the release of the CARs in order that the titles of the properties can already be transferred in their names. BCDA is however, firm with the position that the sale of the properties is not subject to EWT and DST as per the pertinent provision of RA 7227, and consistent rulings of the BIR that the sale of the lots in Fort Bonifacio is exempt from all forms of taxes and fees including EWT and DST. Since, BCDA has already elevated its case to the Court of Tax Appeals, it was decided that BCDA pay the basic CWT and DST under protest."

On September 6, 2012, petitioner filed a letter with RDO No. 49 informing the latter of its payment on September 4, 2012 and requesting for the issuance of the CARs in connection with the sale of properties, which are required for the registration of the same in the name of EDC.[24] As proof of said payments, petitioner provided the BIR Form No. 0605 - Payment Forms,[25] the disbursement vouchers,[26] the requests for payment slips,[27] and the BTR-BIR Deposit/Payment Slips.[28]

Petitioner likewise filed a letter dated April 30, 2012 with the CIR through Ms. Rosario, stamped received on September 6, 2012, apprising the latter on the status of petitioner's protest of the FAN with the Court; the necessity of the CARs issuance for the registration of the properties in the name of EDC; and the payment of the basic deficiency taxes *i.e.*, EWT and DST on September 4, 2012. In the same letter, petitioner requested approval of the abatement of penalties and interest on the EWT and DST, and thus attached BIR Form No. 2110 - Application for Abatement or Cancellation of Tax, Penalties and/or Interest under RR No. 13-2001.[29]

Petitioner and respondent filed their respective Pre-trial Briefs on July 20, 2012 and July 30, 2012.[30]

On October 17, 2012, the parties filed their Joint Stipulation of Facts,[31] and thus a Pre-Trial Order[32] was issued on November 13, 2012.[33] The stipulated issues in the Pre-Trial Order are: (*i*) whether or not BCDA is liable to pay EWT and DST on the sale of its real properties located at Fort Bonifacio, Bonifacio Global City; and (*ii*) whether or not BCDA is entitled to a refund for the payment it made under protest on September 4, 2012 of PhP5,267,770.00 representing the basic deficiency taxes for EWT and DST.

On May 22, 2013, petitioner filed its Formal Offer of Documentary Exhibits,[34] which was resolved by the Court in its

[24] *Id.*, pp. 1005-1007.
[25] *Id.*, pp. 1006-1007.
[26] *Id.*, pp. 1014 and 1016.
[27] *Id.*, pp. 1015 and 1017.
[28] *Id.*, pp. 1018-1019.
[29] *Id.*, pp. 1008-1010.
[30] *Id.*, pp. 155-164 and 167-170.
[31] *Id.*, pp. 182-185.
[32] Id., pp. 197. 203.
[33] *Id.*, pp. 197-203.
[34] *Id.*, pp. 806-814.

Resolutions dated July 1, 2013[35] and September 5, 2013[36]. Petitioner also filed another Formal Offer of Documentary exhibits on October 4, 2013[37], which was resolved by the Court in November 20, 2013[38].

On March 3, 2014, respondent filed her Formal Offer of Evidence,[39] which was resolved by the Court in its April 22, 2014 Resolution, which likewise ordered the parties to file their respective memoranda.[40]

In compliance to the Resolution, petitioner and respondent then filed their respective Memoranda on May 26, 2014[41], and June 23, 2014 through registered mail[42].

Thus on July 3, 2014, the Court promulgated a Resolution[43] submitting the case for Decision.

Hence, this Decision.

The Issues[44]

The issues for the consideration of the Court are as follows:

1. WHETHER OR NOT BCDA IS LIABLE TO PAY EWT AND DST ON THE SALE OF ITS REAL PROPERTIES LOCATED AT FORT BONIFACIO, BONIFACIO GLOBAL CITY.

2. WHETHER OR NOT BCDA IS ENTITLED TO A REFUND FOR THE PAYMENT IT MADE UNDER PROTEST ON SEPTEMBER 4, 2012 IN THE AMOUNT OF PHP5,267,770.00, REPRESENTING THE BASIC TAX FOR THE EWT AND THE DST.

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[35] *Id.*, pp. 1069-1070.
[36] *Id.*, pp. 1089-1092.
[37] *Id.*, pp. 1378-1381.
[38] *Id.*, pp. 1413-1414.
[39] *Id.*, pp. 1428-1429.
[40] *Id.*, p. 1552.
[41] *Id.*, pp. 1554-1574.
[42] *Id.*, pp. 1581-1588.
[43] *Id.*, pp 1591.
[44] *Id.*, *JSFI*, p. 183.

Petitioner's Arguments

Petitioner alleges that pursuant to the BCDA Charter, proceeds from the disposition or sale of its properties serve two (2) purposes, to wit: (*i*) to serve as the capital funding of petitioner; and (*ii*) it is deemed appropriated for the purposes enumerated in the BCDA Charter.[45]

Relying on Administrative Order ("AO") No. 236,[46] petitioner further argues that proceeds of sale of government lands and properties pursuant to Section 8 of the BCDA Charter, are government funds, which shall be remitted to the National Treasury and accrue to the General Fund of the government.

Moreover, petitioner submits that no less than the BIR has consistently recognized the former's exemption from Income Tax, Capital Gains Tax and DST on its sale of properties, *i.e.* BIR Ruling No. 027-2000,[47] and BIR Ruling [DA-376-2003].[48]

Finally, petitioner asserts that the passage of the Tax Code did not repeal petitioner's exemption from taxes and fees on the proceeds of the sale of its property pursuant to Section 8(d) of the BCDA Charter. According to petitioner, it is an established rule of statutory construction that between a general law and a special law, the special law prevails or in this case, the BCDA Charter. Thus, petitioner alleges that it is exempt from taxes and fees on the proceeds of the sale of the said real properties pursuant to Section 8(d) of the said Charter.

Respondent's Counter-Arguments

Respondent raises four (4) counterarguments to the Petition for Review.

First, respondent submits that the Court lost jurisdiction when petitioner voluntarily and unilaterally made payment on the basic deficiency taxes, as found by respondent on the issued FAN.

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[45] Section 8(d) of the BCDA Charter.

[46] "*Prescribing the Rules and Regulations on the Collection, Remittance and Utilization of Sales Proceeds Under RA No. 7227, as Amended by RA No. 7917,*" January 8, 1996.

[47] June 28, 2000.

[48] October 20, 2003.

According to the latter, Section 7(a)(2)[49] of RA No. 9282 provides that the Court shall exercise exclusive appellate jurisdiction to review by appeal any inaction by the CIR in cases involving disputed assessment, among others. However, on September 4, 2012, upon petitioner's payment, petitioner divested the Court of jurisdiction.

Second, respondent reiterates the Court's lack of jurisdiction because of petitioner's failure to submit the required documents in support of its Protest Letter within sixty (60) days from the date of filing thereof, in accordance with Section 228 of the Tax Code. Respondent avers that failure to comply with Section 228 of the Tax Code, results in a final, executory and demandable assessment, which is beyond the purview of the Court.

Third, respondent rejects petitioner's contention that special laws prevail over general laws, as provided for in the rules of statutory construction. It is respondent's opinion that based on several Supreme Court decisions that "tax exemptions must be clear and unequivocal."[50] Since Section 27(C) of the Tax Code has no ambiguities with regard to the government entities exempt from tax on their taxable business activities, coupled with the fact that petitioner is not one of those government entities specifically provided, thus petitioner is subject to income tax on proceeds of sale of properties, *i.e.*, EWT and DST.

Lastly, respondent alleges that the transfer of real properties made by petitioner to EDC are subject to EWT and DST, as prescribed in Sections 27(C) and 228 of the Tax Code.

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[49] "Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

xxx xxx xxx"

[50] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas*, G.R. No. 156040, December 11, 2008, 573 SCRA 605.

The Ruling of the Court

The assessment has not become final and executory as BCDA was able to submit complete documents within 60 days from the filing of the protest.

Section 228 of the Tax Code provides:

"SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</u>
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

From the foregoing, an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

In this case, petitioner received the FAN on August 25, 2011.[51] Petitioner then had until September 24, 2011 to file its protest. On September 19, 2011, petitioner filed its protest and attached the BCDA Charter, the Deed of Absolute Sale Between BCDA and EDC, the Memorandum from the BIR Memo-023-2010 dated September 13, 2010,

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[51] *Records*, Exhibits "L", "L-1", "L-2", and "L-3", pp. 911-914.

petitioner's letter addressed to the BIR Revenue District Officer of RDO No. 44, Ms. Rosario, with attachments dated March 17, 2011, and petitioner's letter addressed to the Regional Director of Revenue Region No. 8, Mr. Jaime B. Santiago, as supporting documents.[52]

Pursuant to Section 228 of the Tax Code, petitioner should submit relevant documents within 60 days from the filing of the protest or until November 23, 2011. Since petitioner already submitted its supporting documents on September 19, 2011 together with its protest, the assessment could not have become final, executory, demandable and unappealable.

Corollary thereto is that petitioner cannot be said to have failed to submit relevant documents that would render the assessment final because in its Protest Letter[53] it attached the said documents.

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[54] it has been held that:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Therefore, the assessment could not have become final, executory and unappealable, as petitioner was able to comply with the submission of documents on time.

The proceeds from the sale of BCDA's properties are exempt from all forms of taxes pursuant to its Charter.

Since the central issue of the Petition for Review to be resolved is: whether or not proceeds from the sale of petitioner's properties are

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[52] *Id.*, Exhibit "P", pp. 918-1003.
[53] *Id.*
[54] G.R. Nos. 172045-172046, June 16, 2009, 589 SCRA 253.

exempt from taxes pursuant to the BCDA Charter in relation to Section 27(C) of the Tax Code, it is imperative to consider: (*i*) the history of the Tax Code, specifically regarding the taxation of the income of all corporations, agencies, or instrumentalities owned or controlled by the Government; (*ii*) the history of the BCDA Charter, specifically on the taxation of the sale of petitioner's properties.

In the case *BCDA vs. Commissioner of Internal Revenue*,[57] the Honorable Presiding Justice Roman G. Del Rosario extensively discussed the history of the Tax Code and the BCDA Charter, in relation to petitioner's exemption from all forms of taxes on the sale of Metro Manila camps.

As discussed by the Honorable Presiding Justice, on June 3, 1977, former President Ferdinand E. Marcos signed into law Presidential Decree ("PD") No. 1158.[58] Section 24(c) of PD No. 1158 stated that all corporations, agencies, or instrumentalities owned or controlled by the Government are subject to income tax, to wit:

> "(c) Government-owned or controlled corporations, agencies, or instrumentalities. – The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Section 26 of this Code shall pay the rates provided in this Section. <u>All corporations, agencies, or instrumentalities owned or controlled by the Government, including the Government Service Insurance System and the Social Security System,</u> shall pay such rate of tax upon their taxable income as are imposed by this section upon associations or corporations engaged in a similar business, industry, or activity." (Emphasis supplied)[59]

On January 1, 1998, RA No. 8424[60] took effect maintaining the taxability of government owned or controlled corporations, agencies, or instrumentalities with the exception of five (5) government owned or controlled corporations, agencies or instrumentalities, namely: the Government Service Insurance System ("GSIS"), the Social Security

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[57] CTA Case No. 8140, September 13, 2013.
[58] "*A Decree to Consolidate and Codify All the Internal Revenue Laws of the Philippines*," June 3, 1977
[59] CTA Case No. 8140, September 13, 2013.
[60] "*An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes*," January 1, 1998.

System ("SSS"), the Philippine Health Insurance Corporation ("PHIC"), the Philippine Charity Sweepstakes Office ("PCSO") and the Philippine Amusement and Gaming Corporation ("PAGCOR"). Section 27 (C) of RA No. 8424 states:

> "(C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity." (Emphasis supplied)[61]

On July 1, 2005, RA No. 9337[62] effectively amended certain sections of RA No. 8424, including Section 27(C). The amendment on the afore-quoted Section excluded PAGCOR from the enumeration of government owned or controlled corporations, agencies or instrumentalities that are exempt from payment of corporate income tax. Section 27(C) of RA No. 9337 now reads:

> "(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations

[61] CTA Case No. 8140, September 13, 2013.
[62] "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other Purposes*," July 1, 2005.

engaged in a similar business, industry, or activity." (Emphasis supplied)[63]

Clearly from the foregoing, it was and is the intention of Congress that all government-owned or controlled corporations, agencies or instrumentalities be liable for income tax on their taxable income, except those specifically enumerated, *i.e.* the GSIS, SSS, PHIC and PCSO.

Since BCDA is not one of the government-owned or controlled corporations enumerated as exempt from income tax on its taxable income, the Court shall now look into the history of the BCDA Charter.

As discussed by the Honorable Presiding Justice Roman G. Del Rosario in the said case *BCDA vs. Commissioner of Internal Revenue,*[64] on March 12, 1992, Congress approved RA No. 7227, which created BCDA, a government instrumentality vested with corporate powers. Congress, however, did not exempt petitioner from payment of corporate income tax pursuant to Section 8(d):

> "xxxThe President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. <u>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</u>, shall be used for the following purposes with their

[63] CTA Case No. 8140, September 13, 2013.
[64] *Id.*

corresponding percent shares of proceeds: xxx" (Emphasis ours)

On February 21, 1995, Congress amended Section 8(d) of RA No. 7227 to specifically exempt the proceeds of the sale by petitioner of the portions of Metro Manila military camps from all kinds of taxes and fees. The BCDA Charter now reads:

"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:

(d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road and radial road construction: Provided, further, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. 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 for the following purposes with their corresponding percent shares of proceeds: xxx

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." (Emphases supplied)[65]

It is apparent from the foregoing that Congress did not make petitioner itself a tax exempt entity. It however clearly and unequivocally declared that the proceeds from the sale by petitioner of portions of Metro Manila military camps are exempt from all forms of taxes.[66]

From the foregoing discussion, PD No. 1158, RA Nos. 8424 and 9337 (collectively referred to as the "Tax Code") refer in general to the taxability of government owned or controlled corporations, agencies or instrumentalities. While the BCDA Charter specifically governs petitioner's proceeds from the sale of portions of Metro Manila military camps.

In the recent case of *Commissioner of Internal Revenue vs. BCDA*,[67] the CTA *En Banc* had the occasion to rule that between the BCDA Charter, on one hand, which is a special law governing the BCDA, which took effect in 1995; and the Tax Code, on the other hand, which is the general law on national internal revenue taxes, that took effect on January 1, 1998, the former prevails.

It is a well-established rule of statutory construction that a special law prevails over a general law regardless of their dates of enactment; and the special law is to be considered as remaining an exception to the general law.[68]

Therefore, the BCDA Charter which exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, *i.e.* EWT and DST governs.

Likewise, in the case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*,[69] the Supreme Court has settled the

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[65] *Id.*
[66] *Commissioner of Internal Revenue vs. Bases Conversion Development Authority*, CTA EB No. 1123 (CTA Case No. 8140), December 16, 2013.
[67] CTA EB No. 1123, December 16, 2014.
[68] *CIR vs. Philippine Airlines, Inc.*, G.R. No. 179259, September 25, 2013, 691 SCRA 94.
[69] G.R. No. 164155 & 175543, February 25, 2013.

issue of exemption from all forms of taxes that arises from the proceeds of petitioner's sale of properties in Metro Manila military camps.

Thus, from the foregoing discussion, it is established that the proceeds of the sale of petitioner's properties in Metro Manila military camps are exempt from all forms of taxes.

Considering that the proceeds from sale of petitioner's are "exempt from all forms of tax," the FANs (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111- E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 issued by the CIR are declared void. Consequently, the payments made under protest on September 4, 2012 were erroneously paid to the respondent.

Since petitioner paid under protest on September 4, 2012 the EWT and DST on the sale of properties, as evidenced by the BIR Form No. 0605 - Payment Forms,[70] the disbursement vouchers,[71] the requests for payment slips,[72] and the BTR-BIR Deposit/Payment Slips,[73] petitioner is entitled to its payment in the amount of PhP5,267,770.00.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED.** Respondent is hereby **ORDERED** to (*i*) **CANCEL** the Formal Assessment Notices (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111- E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively; (*ii*) **RETURN** to petitioner the amounts of PhP4,052,125.00 and PhP1,215,645.00 representing its payment under protest on September 4, 2012 for basic deficiency Expanded Withholding Tax and Documentary Stamp Tax; and (*iii*) **ISSUE** the

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[70] *Id.*, p. 1006-1007.
[71] *Id.*, pp. 1014 and 1016.
[72] *Id.*, pp. 1015 and 1017.
[73] *Id.*, pp. 1018-1019.

corresponding Certificates Authorizing Registration for the sale of properties.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division's Chairperson's Attestation, 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice