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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORANBO REALTY CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4820

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 23 1995

x - x

D E C I S I O N

Petitioner instituted this petition for review on June 15, 1992 seeking for the refund of the amount of P503,294.00 allegedly representing erroneously paid documentary stamp tax on the Conveyance of Real Property received by petitioner as liquidating dividend from its dissolved wholly owned subsidiary.

As borne out by the pleadings, petitioner is a corporation duly organized and existing under the laws of the Philippines. It wholly owns Noma Development Corporation, a domestic corporation whose term of existence was shortened to December 31, 1988 by an amendment of the Articles of Incorporation duly approved by the Securities and Exchange Commission on September 28, 1989 (Exh. C).

A Deed of Conveyance was executed by Noma Development Corporation (Assignor) and Oranbo Realty Corporation (Assignee) on June 29, 1990 with respect to the transfer of real properties together with its buildings and improvements without any consideration but by way of liquidating dividends in pursuance to the dissolution of Noma Development Corporation (Exh. A).

Petitioner paid on June 29, 1990, the documentary stamp tax in the amount of P503,294.00 on the Deed of Conveyance in order to transfer the real properties in favor of petitioner. The Confirmation Receipt (No. B 19606376) evidencing the payment of documentary stamp tax was issued in the name of Noma Development Corporation. However, a Certification, dated January 31, 1992, was later issued by the Head of the Capital Gains Tax Unit certifying that the documentary stamp tax was paid by Oranbo Realty Corporation and not by Noma Development Corporation (Exh. B).

On February 21, 1992, petitioner filed a claim for refund or issuance of a Tax Credit Certificate in the amount of P503,294.00 pursuant to Section 204(3) of the Tax Code (Exhs. D and D-1). Petitioner relied on the provisions of Sections 185 and 189 of Revenue Regulations No. 26, as amended; BIR Ruling No. 45-87, February 16, 1987, BIR Ruling No. 228-89, November 14, 1989; and BIR Ruling No. 059-90, dated April 17, 1990.

It is pleaded by respondent that the petition states no cause of action for failure on the part of petitioner to allege that the documentary stamp tax was illegally or erroneously collected. Claims for refund are strictly construed against the claimant. The burden of proof lies with the taxpayer to show that the tax was erroneously or illegally paid.

After the presentation of evidence by petitioner, respondent failed to present her own evidence thereby prompting petitioner to move for the submission of this case for decision. Petitioner filed a memorandum in support of its case while respondent did not.

The question is whether or not petitioner is entitled to the refund or issuance of a Tax Credit Certificate in the amount of P503,294.00, representing allegedly erroneously paid documentary stamp tax on the conveyance of real property by way of liquidating dividend.

We answer in the affirmative.

Sections 185 and 189 of Revenue Regulations No. 26, as amended, is clear on this point, thus:

> "Section 185. **Conveyances without consideration.** - Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable."

> "Section 189. **Conveyances by corporation t owner of all the capital.** - A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax."

Likewise, to further elucidate the above-mentioned provision the BIR had issued BIR Ruling No. 228-89, November 14, 1989, which refers to a Deed of Assignment of 150 hectares of real property located in Quezon City issued by DPWH to DENR and DENR to HIGC without consideration was considered to be exempt from the payment of the documentary stamp tax. (See Section 185 of Rev. Regs. No. 26)

BIR Ruling No. 059-90, April 17, 1990, also provides for the exemption of a realty corporation from paying the documentary stamp tax on the transfer of real property (land and building) to effect the distribution of its assets in the process of liquidation to its sole stockholder. We quote the pertinent provision of said ruling, as follows:

> "In reply, please be informed that Section 189 of Revenue Regulations No. 26 otherwise known as the Documentary Stamp Tax Regulations provides, viz:
>
> > 'Section 189. Conveyances by corporation to owner of all the capital. - A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax.'
>
> It is clear from the above-quoted section of Revenue Regulations No. 26 that a conveyance distributing in liquidation the assets of a corporation consisting of real estate without consideration to an owner of its capital stock is not subject to the documentary stamp tax imposed under Section 196 of the Tax Code, as amended. Accordingly, your opinion that the distribution liquidation of the assets of Owl, consisting of land and building to its sole stockholder, the SGV & Company Provident Plan, a duly qualified BIR-registered tax-exempt employee benefit plan is not subject to documentary stamp tax is hereby confirmed."

There is no question that the Deed of Conveyance was issued in favor of petitioner by Noma Development Corporation as liquidating dividend being the sole stockholder of the latter. The conveyance of real property was effected without any consideration since it was done in pursuance to a valid dissolution of Noma Development Corporation and not by sale.

The documentary stamp tax on a Deed of Conveyance is based on the consideration or value received or contracted to be paid for the land "after making proper allowance for any encumbrance", thereon (BIR Ruling No. 298, July 6, 1988). It follows, therefore, that without any consideration at all there can be no basis from where the documentary stamp tax can be computed. The tax shall be based on the amount of consideration or value received or contracted to be paid or the fair market value of the real property, whichever is higher. (Rev. Memo Cir. No. 44-86).

This finds support in Section 196 of the Tax Code, as amended by Presidential Decree Nos. 1457 and 1959, which provides:

> "SEC. 196. ***Stamp tax on deeds 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, 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:
>
> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed one thousand pesos, ten pesos.
>
> (b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, ten pesos.

> When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement, of the consideration in any conveyance, deed, instrument, or writing subject to such tax the Commissioner, provincial or city treasurer, or other revenue officer shall from the assessment rolls or other reliable source of information assess the property of its true market value and collect the proper tax thereon."

It is clear from the foregoing provision that first there must be a consideration on which the documentary stamp shall be based. Thus, it applies only if the instrument is a sale or other conveyance of real property for a consideration in money or money's worth. However, the last paragraph of Section 196 allows the Commissioner to use as basis for the documentary stamp tax the "true market value" of the property only if the consideration is incorrectly stated in the Deed of Conveyance or Sale. Still it is preconditioned to the fact that there must be an incorrect consideration as compared to no consideration at all. In the latter case, similar to the case at bar, no documentary stamp tax is due.

WHEREFORE, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to refund or issue in favor of petitioner a Tax Credit Certificate in the amount of P503,294.00, representing erroneously paid documentary stamp tax on a Deed of Conveyance of real properties in the form of liquidating dividends issued by Noma Development Corporation, a dissolved corporation, of which petitioner is the sole stockholder.

No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals