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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WELLINGTON AND COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5285

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 1996

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DECISION

This petition is a claim for the refund of documentary stamp tax in the amount of P710,578.50 (P710,581.50 less P3.00 documentary stamp tax on the acknowledgment certificate pursuant to Section 188 of the Tax Code, as amended) alleged to be erroneously paid on the transfer of property declared as dividends effected on September 10, 1993.

Petitioner is a domestic corporation engaged in the business of investment and real estate.

The evidence presented by the petitioner showed that on September 10, 1993, a Deed of Assignment was executed by petitioner corporation in favor of its shareholders namely: Wellington, Welison, William, Washington and Teresita, all surnamed Ty; Leticia T. Dee, Lily T. Ang; Felicisima T. Sia; Salustiana T. Tan and Wilan Resources Corporation, pursuant to a Board of Directors' resolution declaring property dividends covering certain condominium units of the Doña Salustiana D. Ty Tower, with an aggregate area of 5,932.77 sq. m. located along Paseo de Roxas, Makati (Exhibit A). The properties assigned to its shareholders have a book value of P71,058,123.47 as of December 22, 1992. As a consequence of the transfer, petitioner corporation paid on September 10, 1993 the total amount of P710,581.50 to the Bureau of Internal Revenue, corresponding to the 1% of the value of the properties as documentary stamp tax (Exhibits B and B-1).

On November 2, 1994, petitioner filed a claim for refund with respondent's office, requesting that the documentary stamp tax that it paid on the transaction earlier mentioned, be returned to them on the ground that the transfer of property declared as dividends is not subject to the documentary stamp tax pursuant to Section 196 of the Tax Code and Revenue Ruling No. 498-93, where respondent declared that a deed of assignment effecting the transfer of property as dividends is not subject to the documentary stamp tax.

Respondent remained silent on this claim for refund so petitioner filed an appeal with this Court reiterating the same grounds proposed in the administrative level. Still, respondent maintained her passive stance by not filing an answer to the petition for review, until she was finally declared in default by this Court in a Resolution, dated February 23, 1996 (p. 22, CTA rec.). No motion to set aside the order of default was ever filed by respondent to restore her standing in Court, hence, she was not allowed to take part in the proceedings of this case until the same was submitted for decision.

Petitioner anchors its claim on the argument that the Tax Code provisions and relevant revenue regulations on documentary stamp tax impose such tax on conveyances of property with a consideration and since it transferred the Condominium units to its shareholders as property dividends, the said transfer being without consideration, is therefore exempt from the documentary stamp tax. Furthermore, petitioner contends that in Revenue Ruling No. 498-93, respondent held that a Deed of Assignment effecting the transfer of property declared as dividends is not subject to the documentary stamp tax.

The issue presented for resolution is whether or not the transfer of property declared as dividends is exempt from the documentary stamp tax. The answer to this question will determine whether or not the petitioner is entitled to the refund of P710,578.50, corresponding to the documentary stamp tax on the assignment of property as dividends net of the P3.00 due on the acknowledgment certificate pursuant under Section 188 of the Tax Code, as amended.

As respondent was already declared in default, this Court relied heavily on the evidence presented by the petitioner to see if the contention of the petitioner rests on sound factual and legal bases.

We find the petitioner's argument meritorious. As pointed out in the petition for review, Section 185 of Revenue Regulations No. 26, as amended, more commonly known as the "Documentary Stamp Tax Regulations", provides that conveyances of realty without a consideration is exempt from the documentary stamp tax and we quote:

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

Even the respondent acknowledged the abovequoted provision as it relates to conveyance of properties declared as dividends when she issued Revenue Ruling No. 498-93, dated December 20, 1993, pertinent portions of which are quoted hereunder:

> "Such being the case, your opinion that since your client, Libra Agro-Industrial Development Corporation declared on November 5, 1990 property dividend to all its stockholders of record as of November 15, 1990, the said property dividend is no longer subject to income tax and consequently to the creditable expanded withholding tax imposed under Revenue

Regulations No. 1-90, implementing Section 50(b) of the Tax Code, as amended, is hereby confirmed.

Moreover, under Section 185 of Regulations No. 26, as amended, otherwise known as the Documentary Stamp Tax Regulations, conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable.

In view thereof, and considering that the proposed transfer of the said property dividend to the stockholders of your client not in connection with a sale or its sale and the same is without any monetary consideration, this Office likewise confirms your opinion that the Deed to be executed to effect the transfer of such property dividend to the stockholders of your client is not subject to the documentary stamp tax imposed under Section 196 of the Tax Code, as amended. The acknowledgment however, of said Deed of Conveyance is subject to the documentary stamp tax (P3.00) on certificates pursuant to Section 188 of the Tax Code."

On November 16, 1994, respondent issued another ruling, BIR Ruling No. 156-94, reaffirming her earlier stand, thus it was stated:

"(4) That the Deed of Conveyance to be executed between Foodmine and the recipient stockholders covering the real estate properties declared as property dividends, not being a sale and without monetary consideration shall not be subject to the documentary stamp tax imposed under Section 196 of the Tax Code, as amended, but only to the documentary stamp tax of P10.00 pursuant to Section 188 of the Tax Code, as amended (BIR Ruling Nos. 108-93 dated March 16, 1993; 498-93 dated December 20, 1993)."

The evidence presented by the petitioner clearly shows that a Deed of Assignment was executed between petitioner corporation and its stockholders as a consequence of the declaration of dividends in the form of real properties (Exhibit A). Petitioner subsequently paid the documentary stamp tax on said transaction in the amount of P710, 581.50, corresponding to 1% of the book value [P71,058,123.47] of the real properties (Exhibits B and B-1). As earlier discussed, such payment was clearly erroneous because no documentary stamp tax liability ensued from such transaction primarily because there was no consideration for the conveyance of the real properties to the stockholders, except for the minimal amount of P3.00 as documentary stamp tax on certificates pursuant to Section 188 of the Tax Code. This fact is evident from the provisions of Section 196 of the Tax code which provides, thus:

> "**Sec. 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, 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 collected the proper tax thereon." (As amended by PD 1457 and PD 1959)

This aforequoted provision declares that the documentary stamp tax shall be based on the consideration involved, hence it follows that without such consideration, no documentary stamp tax is due because then there would be no basis for a valid computation of the tax.

In the case entitled Orambo Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4820, dated January 23, 1995, this court had the occasion to rule, thus:

> "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).

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> It is clear from the foregoing provision (referring to Section 196 of the Tax Code) 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, in view of the foregoing, respondent is hereby ordered to **REFUND** in favor of the petitioner, the amount of P710,578.50, net of the P3.00 documentary stamp tax on acknowledgment certificate pursuant to Section 188 of the Tax Code, as amended, representing erroneously paid documentary stamp tax on the Deed of Assignment conveying real properties declared as dividends to the shareholders of the corporation.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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