REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SPOUSES PABLO S. MABUTAS, JR. AND EDNA LARON MABUTAS,
Petitioner,

- versus -

HON. LILIAN B. HEFTI, OIC-COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7659

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 03 2009 12:05pm

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DECISION

BAUTISTA, *J.*:

This is an appeal, filed in accordance with Section 229 of the National Internal Revenue Code (NIRC) of 1997 and in conformity with the provisions of the Revised Rules of the Court of Tax Appeals, from the inaction of the Commissioner of Internal Revenue on a written claim for refund of alleged erroneously paid internal revenue taxes and penalties.

Spouses Pablo S. Mabutas, Jr. and Edna Laron-Mabutas (Petitioners) are of legal age and residents of San Antonio, Agoo, La Union. They are represented by Atty. Rodel T. Lopico, with office address at 2nd Floor, Farmacia Corazon Building, Bauang, La Union; where they may be served with notices and other processes of this Court.[1]

Respondent is the Commissioner of Internal Revenue and sued herein in said official capacity and may be served with summons and other notices of this Court at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

The essential factual antecedents as culled from the records follow.

On November 12, 1998, Marjorie Aung, while her husband Aung Myint, a Burmese citizen, was abroad, obtained from herein petitioner Edna Laron-Mabutas a loan of P1,000,000.00, payable with twenty-five percent (25%) interest for the period from November 12, 1998 to February 1999. The loan was secured by a deed of mortgage dated November 12, 1998.

On March 26, 1999, Marjorie Aung obtained another loan of P120,000.00 from petitioner Laron-Mabutas, payable on or before May 20, 1999, with interest of ten percent (10%) per month until fully paid.

On January 15, 2000, after the loan of P1,000,000.00 became due, Marjorie Aung issued to Laron-Mabutas a check for P1,000,000.00 postdated January 31, 2000. The check was dishonored when it was deposited on February 1, 2000.

After repeated demands for the payment of the total principal amount of P1,120,000.00 and of the interest were unheeded, petitioners commenced a suit against Marjorie Aung and her husband (Spouses Aung) in the Regional Trial Court (RTC) in Agoo, La Union for the foreclosure of the mortgage. A decision was later rendered whereby the RTC ruled that the mortgage was void for lack of consent of the husband of Marjorie Aung. The decision was appealed by herein petitioners, but

[1] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), *Rollo,* p. 72.

the appeal was later on dismissed by the Court of Appeals on November 29, 2002 and an entry of judgment was issued on January 3, 2003.

On November 28, 2003, petitioners sued Spouses Aung in the RTC-Branch 31, Agoo, La Union, praying for the payment of P1,120,000.00 and interest, moral damages, and attorney's fees. The same was docketed as Civil Case No. A-2274, entitled "Spouses Pablo Mabutas, Jr. and Edna Laron-Mabutas vs. Spouses Marjorie Aung and Aung Myint".

On February 20, 2004, RTC-Branch 31, Agoo, La Union ruled in favor of herein petitioners and declared Spouses Aung civilly liable to pay the amount of P1,120,000.00 plus interest and attorney fees.

On February 23, 2004, Marjorie Aung's counsel filed a notice of appeal, manifesting that she was appealing to the Court of Appeals because the decision was allegedly contrary to existing laws and jurisprudence.

On February 24, 2004, the RTC issued an order giving due course to the notice of appeal of Marjorie Aung's counsel and directed the OIC-Branch Clerk of Court to transmit the records of the case to the Court of Appeals.

On March 12, 2004, however, petitioners filed a *Motion to Dismiss Appeal with Motion for Entry of Judgment and Issuance of Writ of Execution*.

On March 19, 2004, the RTC issued an order reversing its previous order that gave due course to the notice of appeal.

On March 22, 2004, the RTC issued another order directing that the decision dated February 20, 2004 be entered in the Book of Entry of Judgment and that a writ of execution be issued. On March 30, 2004, a certificate of finality was issued for the decision dated February 20, 2004.

On June 4, 2004, Spouses Aung's real properties, covered by ARPNO. 016-00525/Lot No. 14316 and ARPNO. 016-00526, were sold at public auction to satisfy their judgment obligation. The said properties were sold to petitioner Laron-Mabutas as the lone bidder in the amount of P3,000,000.00, for which a *Certificate of Sale by virtue of a Writ of Execution* (*Certificate of Sale*)[2] was subsequently issued by the Clerk of Court of RTC-Branch 31, Agoo, La Union.

On July 20, 2005, as a consequence of the said sale, petitioners paid the corresponding capital gains tax in the amount of P180,000.00, and documentary stamp tax (including penalties) in the amount of P79,125.00, or a total amount of P259,125.00.[3] This payment was acknowledged by Revenue District Officer Imelda A. Bueno of BIR Revenue District Office No. 3 – San Fernando City, La Union.[4]

On November 18, 2005, the Clerk of Court of RTC-Branch 31, Agoo, La Union, issued a *Certificate of Absolute Definitive Deed of Sale*[5] (*Certificate of Absolute Sale*) covering the same parties and properties in connection with the above-stated civil case.

Marjorie Aung sought the nullification of the decision dated February 20, 2004 before the Court of Appeals. And on October 16, 2006, the Seventh Division of the Court of Appeals, in CA-G.R. SP No. 93749 entitled "Marjorie Aung vs. Hon. Clifton U. Ganay, and Spouses Pablo Mabutas, Jr. and Edna Laron Mabutas, and the RTC 31 Sheriff, Agoo, La Union", rendered a decision[6] declaring, *inter alia*, the *Certificate of Sale* dated June 4, 2004 and the *Certificate of Absolute Sale* dated

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[2] Exhibit "H", *Rollo*, pp. 130-131.
[3] Exhibits "A" and "G", *Rollo*, pp. 8 and 129, respectively.
[4] Exhibit "G", *Rollo*, p. 129.
[5] Exhibit "I", *Rollo*, pp. 132-133.
[6] Exhibit "B-1", *Rollo*, pp. 10-18.

November 18, 2005 as "VOIDED AND SET ASIDE". The said decision became final and executory on November 13, 2006.[7]

Upon the belief that they erroneously paid the amount of P259,125.00, which represents the taxes and penalties paid for the voided transaction, petitioners filed before the BIR a written claim for refund of the said amount on April 24, 2007.[8]

On July 18, 2007, due to the inaction of respondent on the said claim, the instant *Petition for Review* was filed before this Court.

In the *Answer*[9] filed on September 27, 2007, respondent alleged the following Special and Affirmative Defenses:

> "4. She reiterates and pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
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> 5. Considering that there was no proof of finality of the decision of the Court of Appeals in the case entitled 'MARJORIE AUNG VS. HON. CLIFTON U. GANAY, and SPOUSES PABLO MABUTAS JR. and EDNA LARON MABUTAS, and the RTC 31 SHERIFF, AGOO, LA UNION' C.A. G.R. SP No. 93749 involving the sale of real properties which were subjected to capital gains tax, documentary stamp tax and penalties, the payment of the said tax liabilities by the petitioners, in view of the public auction sale, is not erroneous or illegal. Hence, petitioners' claim for refund is without factual and legal basis.
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> 6. Assuming arguendo that the remedy of claim for refund is available to petitioners, said claim for refund is subject to administrative investigation/examination by the respondent.
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> 7. The amount of Php 259,125.00 being claimed by petitioners as alleged erroneously paid capital gains tax, documentary stamp tax and penalties for the year 2005 was not properly documented.
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> 8. Petitioners must showed that they had complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

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[7] Exhibits "C" and "C-1", *Rollo*, pp. 125-126.
[8] Exhibits "G" and "D", *Rollo*, pp. 129 and 127, respectively.
[9] *Rollo*, pp. 39 to 42.

9. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. manila Jockey Club, Inc. 98 Phil. 670);

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

After the approval of the parties' *Joint Stipulation of Facts and Issues* filed on November 26, 2007, per this Court's Resolution dated January 14, 2008, trial on the merits ensued.

In the course of the trial, petitioners testified on their own behalf and presented documentary evidence.

At the hearing on August 7, 2008, respondent's counsel manifested that there is no report for investigation as regards the instant claim for refund and that he is submitting the case for decision. The parties were then given a period of thirty (30) days from such date within which to file their respective *Memorandum*.

On August 12, 2008, petitioners filed their *Memorandum*.

On September 4, 2008, respondent moved for an extension of time to file her *Memorandum*. Consequently, in an Order dated September 9, 2008 issued by this Court, respondent was given until October 8, 2008 within which to file her *Memorandum*.

In a Resolution dated October 17, 2008, the case was considered submitted for decision, without respondent's *Memorandum* having been filed.

The stipulated issues[10] to be resolved by this Court are as follows:

> "Whether or not petitioners are entitled to a refund in the total amount of TWO HUNDRED FIFTY NINE THOUSAND ONE HUNDRED TWENTY FIVE PESOS (P259,125.00), allegedly representing capital gains tax, documentary stamp tax and penalties erroneously paid by petitioners in July 20, 2005 or taxable year 2005 and whether or not the respondent can be ordered to refund the amount being claimed."

The instant *Petition* is partly meritorious.

Petitioners are not entitled to the refund of the paid documentary stamp tax and imposed penalties

In the case of **Philippine Home Assurance Corporation, *et al.* vs. Court of Appeals, *et al.***[11], the Supreme Court held:

> "In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and **conveyances of real property**.
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> **Documentary stamp taxes are thus levied on the exercise of these privileges** through the execution of specific instruments, **independently of the legal status of the transactions giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable**. As the Supreme Court of the United States held in *Du Pont v. United States:*
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>> The tax is not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. In this view it is immaterial whether the transfer of the account constituted a sale.

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[10] Statement of Issues, JSFI, *Rollo*, p. 73.
[11] G.R. No. 119446, January 21, 1999.

> This case has been cited in several of this Court's decisions, first in *Commissioner of Internal Revenue v. Heald Lumber Co.*[12], then in *Philippine Consolidated Coconut Industries, Inc. v. Collector of Internal Revenue*[13], then in *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*[14], and most recently in *Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals*[15]. xxx." (*Emphasis supplied*)

Based on the foregoing, it is plain that documentary stamp taxes are lawfully levied regardless of whether the subject conveyance or transfer of real property is defective or null and void. Thus, the subsequent declaration of nullity of the *Certificate of Sale* dated June 4, 2004 and of the *Certificate of Absolute Sale* dated November 18, 2005 by the Court of Appeals in CA-G.R. SP No. 93749 is of no consequence and has no bearing whatsoever in the payment of the documentary stamp tax accruing from such conveyance or transfer. Such being the case, the refund of the documentary stamp tax and its corresponding penalties paid by petitioners on the transfer or conveyance of the properties of Spouses Aung to them is **not** warranted.

Petitioners are entitled to the refund of the paid capital gains tax

Income tax, like the capital gains tax, "is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income."[16] In this connection, capital gains tax is aptly defined as "a tax on the gain from the sale of the taxpayer's property forming part of capital asset".[17]

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[12] 10 SCRA 372 (1964).
[13] 70 SCRA 22 (1976).
[14] 145 SCRA 671 (1986).
[15] G.R. No. 118043, July 23, 1998.
[16] *Republic of the Philippines, et al. vs. Manila Electric Company*, G.R. Nos. 141314 and 141369, November 15, 2002.
[17] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc., et al.*, G.R. No. 104171, February 24, 1999.

Section 24(D)(1) of the National Internal Revenue Code (NIRC) of 1997 confirms the above definition in this wise:

> "**SEC. 24. Income Tax Rates.** —
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> xxx xxx xxx
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> **(D) Capital Gains from Sale of Real Property.** —
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> **(1) In General.** — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby **imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines**, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: xxx" (*Emphasis supplied*)

The foregoing implies that in order to be liable for payment of capital gains tax, one has to profit or gain from the sale, exchange or disposition of the real property. In other words, in the absence of income from or the absence of sale, disposition or conveyance of real property, the imposition of capital gains tax does not arise.

In the present case, the *Certificate of Sale* dated June 4, 2004 and the *Certificate of Absolute Sale* dated November 18, 2005 were "VOIDED AND SET ASIDE" by the Court of Appeals. The payment of the capital gains tax was dependent and was a direct consequence of the said sale. Inasmuch as there was no sale to speak of, then the payment of the capital gains tax was improper.

In the case entitled **Commissioner of Internal Revenue vs. Panay Island Water Crystal Storage Corp.**[18], the Court of Appeals, affirming this

[18] CA-G.R. SP No. 68179, June 15, 2004.

Court's ruling in an analogous case that involved a claim for refund of capital gains tax, explained its decision in the following manner:

> "It bears stressing that **it is not the transfer of ownership *per se* that subjects the sale of the 5% capital gains tax but the profit or gain that was presumed to have been realized by the seller/mortgagor by means of said transfer** as can be clearly seen from the provisions of Section 21(e) of the Tax Code (*supra*). Let us not forget that the **capital gains tax is an income tax** defined as a tax on a person's income, wages, salary, commissions, emoluments, profits and the like (Black's Law Dictionary, 6th Edition). **The concept of income implies gain, profit or flow of wealth** (*Madrigal vs. Rafferty*, 38 Phil. 414). The question that should be asked at this point is: did the Petitioners profit or gain anything from (sic) the foreclosure sale where the properties were redeemed within the specified redemption period? The answer is obvious. **Petitioner did not earn any income from the sale of these foreclosed properties, hence they should not be made liable to pay the capital gains tax.**
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> xxx xxx xxx
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> As said RR 4-99 states, no capital gains having been derived by the mortgagor (Petitioners in the instant case), then no capital gains tax shall be imposed. It will be unjust to deprive the Petitioners their right to refund the capital gains tax which they already paid on the foreclosure sale of their properties when the facts show that they redeemed these properties within the period specified by the law. (*Spouses Arturo Soriano and Virginia T. Soriano vs. Hon. Liwayway Vinzons-Chato as Commissioner of Internal Revenue*, CTA Case No. 5563, promulgated on June 22, 1999, with Entry of Judgment dated August 13, 1999)" (*Emphasis supplied*)

Inasmuch as after the *Certificate of Sale* and *Certificate of Absolute Sale* were "VOIDED AND SET ASIDE" there was effectively no longer a sale, transfer or conveyance of real property upon which the capital gains tax can be imposed, the paid capital gains tax should therefore be refunded.

The question now is whether petitioners are the ones entitled to the tax refund.

The capital gains tax is imposed on and normally paid by the income earner (or the seller of the capital asset) and not by the income payor (or the buyer) in a sale transaction; since it is the profit or income derived from the sale that is being taxed.

However, as earlier stated, it was petitioners who actually paid the corresponding capital gains tax in the amount of P180,000.00 and documentary stamp tax (including penalties) in the amount of P79,125.00 on July 20, 2005, instead of Spouses Aung.[19] This payment was even acknowledged by Revenue District Officer Imelda A. Bueno of BIR Revenue District Office No. 3 – San Fernando City, La Union.[20] *Ergo*, even though the capital gains tax is ordinarily paid by the seller, the fact that it was herein petitioners, although buyers, that actually paid the tax; petitioners then are the ones entitled to the tax refund.

In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine.[21] The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to the taxpayer the sums representing erroneous payments of taxes.[22]

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO**

[19] Exhibits "A" and "G", *Rollo*, pp. 8 and 129, respectively.
[20] Exhibit "G", *Rollo*, p. 129.
[21] *Commissioner of Internal Revenue vs. Acesite [Phils.] Hotel Corp.*, G.R. No. 147295, February 16, 2007.
[22] *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 146941, August 9, 2007.

REFUND to petitioners the amount of **ONE HUNDRED EIGTHY THOUSAND PESOS (P180,000.00)**, representing erroneously paid capital gains tax on the subject transaction. However, the refund of the amount of **SEVENTY NINE THOUSAND ONE HUNDRED TWENTY FIVE PESOS (P79,125.00),** representing the documentary stamps tax paid is hereby **DENIED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division