Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SIGUION REYNA, MONTECILLO AND ONGSIAKO,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6613

Members:

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:

AUG 18 2005

x - x

DECISION

UY, *J.*:

Petitioner, Siguion Reyna, Montecillo and Ongsiako, by way of the instant petition for review filed on March 12, 2003, seeks for the refund of the amount **FIVE HUNDRED NINETY TWO THOUSAND SEVEN HUNDRED NINETY ONE AND 75/100 PESOS (P592,791.75)** representing petitioner's allegedly overpaid documentary stamp taxes on its purchase of office condominium units located at the Citibank Centre, 8741 Paseo de Roxas, Makati City.

158

Culled from the records of the case, the undisputed facts are as follows:

Petitioner, Siguion Reyna, Montecillo and Ongsiako Law Offices, is a general professional partnership (GPP) organized and existing under and by virtue of the laws of the Philippines with office address at 4th and 6th Floors, Citibank Center, 8741 Paseo de Roxas, Makati City. Respondent, Commissioner of Internal Revenue, is the government official in charge of the administration and enforcement of the internal revenue laws of the Philippines with office address at the BIR National Office Building, East Triangle, Diliman, Quezon City.

Petitioner purchased office condominium units at the 4th and 6th floors of the Citibank Center, Paseo de Roxas, Makati City in the total amount of P53,064,750.00. On March 8, 2001, petitioner filed with the Asset Valuation Division a request to revalue the zonal values of subject office condominium units averring that the zonal values provided under the Department of Finance Order No. 64-97 dated June 6, 1997 are no longer reflective of the actual market value of the office units purchased *(Annex "A", Petition for Review).*

Without waiting for any response from the respondent with regard to its request for revaluation, petitioner paid the amounts of P6,943,815.00 and P1,388,775.00 on March 12, 2001, representing the capital gains taxes and documentary stamp taxes, respectively, on its purchase of the subject condominium units, for which taxes were computed based on the units' zonal value of P92,584,200.00 *(par 4, Joint Stipulation of Facts and Issues, Records, pp. 63-65).*

159

On March 10, 2003, petitioner filed a claim for refund with the office of the respondent for the allegedly overpaid documentary stamp taxes. And subsequently on March 12, 2003, petitioner filed this instant petition before it could be barred by prescription, pursuant to Section 229 of the National Internal Revenue Code of 1997.

In the Answer filed on April 29, 2003, respondent alleges, among others, that petitioner's claim for refund is still subject to administrative routinary investigation/examination by the respondent's Bureau; that the taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable; petitioner's claim for refund in the amount of P592,791.75 as alleged erroneously paid capital gains tax and documentary stamp tax were not fully substantiated; and that it is respondent who is authorized under the Tax Code to divide the Philippines into different zones or areas or to determine the fair market value of real properties located in each zone or area, pursuant to Section 6 (E) of the 1997 Tax Code.

THE ISSUES

The issues, as stipulated by the parties, are as follows:

1.) Whether or not the Zonal Values adopted by the BIR at the time of the purchase of the office condominium should still be used for purposes of arriving at the documentary stamp tax paid by petitioner.

2.) Whether or not the selling price indicated in the Deed of Absolute Sale at the time of sale should be in lieu of the zonal value.

3.) Whether or not petitioner is entitled to a refund of excess documentary stamp tax paid for the purchase of the condominium units *(Joint Stipulation of Facts and Issues, Records, pp. 63-65)*.

It is petitioner's contention that the zonal values adopted by the respondent at the time of petitioner's purchase of the office condominium units (in the amount of P60,000.00 per square meter pursuant to the most recently updated Department Order No. 64-97 dated January 13, 1998) are no longer reflective of the correct fair market values of the real properties in Makati City. Allegedly due to the financial crisis and the depressed conditions of the real estate market, the subject office units were sold to petitioner at the price of only P37,500.00 per square meter, or P22,500.00 per square meter less than the zonal valuation of the real property. If said valuation will be used as basis for tax purposes, the office units will be placed at an outrageously high, unrealistic and confiscatory valuation, and thus, violative of due process.

Moreover, petitioner submits that the guidelines in the valuation of urban lands have persuasive effect and should be applied suppletorily in the valuation of condominium units.

This Court cannot agree.

The zonal values adopted by the BIR at the time of the purchase of the office condominium units, unless revised or amended in accordance with law by the Commissioner of Internal Revenue, should still be used for purposes of arriving at the documentary stamp tax paid by petitioner. This is in accordance

161

with the provisions of Section 6 (E) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "**Section 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –***
>
> x x x x x
>
> ***(E) Authority of the Commissioner to prescribe Real Property Values.*** **-** The Commissioner is hereby authorized to divide the Philippines into different zones or areas **and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real property located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is higher of:**
>
> (1) the fair market value as determined by the Commissioner; or
> (2) the fair market value as shown in the schedule of values of the Provincial and City Assessors." *(Emphasis and underscoring supplied)*

Evidently, it is the respondent Commissioner of Internal Revenue, who is vested with appropriate authority to determine the fair market value of real properties within a defined zone or area. It is also the respondent Commissioner who is authorized to divide the Philippines into different zones, upon consultation with competent appraisers, both from the public and private sector, and to determine the fair market value of real properties located in each zone or area or what we commonly call, zonal valuation.

Zonal valuation was established with the objective of having an "efficient tax administration by minimizing the use of discretion in the determination of the

162

tax base on the part of the administrator on one hand and the taxpayer on the other hand." ***(Aquafresh Seafoods, Inc. vs Commissioner of Internal Revenue and Regional Director BIR Revenue Region No. 11-Iloilo City, CTA Case No. 6409, December 22, 2004)***. The reason behind the authority granted is the fact that the market values as reflected on the tax declarations are invariably lower than that of the fair market value *(The National Internal Revenue Code Annotated, Hector S. de Leon, Fifth Edition, p 35, 1994)*. And to use such valuations arrived at by the provincial or city assessors would unduly prejudice the government.

In computing any internal revenue taxes, (documentary stamp taxes in the case at bar), the value of the real property shall be appraised, according to either the fair market value as determined by the Commissioner; or the fair market value as shown in the schedule of values of the Provincial and City Assessors, whichever is higher. Absent an appropriate determination by competent appraisers that the said zonal valuations of subject property are highly unrealistic, the same may not be arbitrarily disturbed considering that the determination of the zonal values of real properties requires utmost scrutiny taking into account several factors affecting the area where the real property lies.

Petitioner further invokes the application of the guidelines set forth in BIR Ruling No. 114-99 dated July 29, 1999 to the case at bar which according to petitioner, is followed by local governments in the assessment of real properties in urban lands. A perusal of the said guideline shows that an application of the same would necessitate presentation of specific evidence direly wanting in the case at bar, such as : the description of lot location where subject condominium units are situated, the depth of the lot, street frontages, street corner, sunken or abnormal low land shape of lot and many more factual details about the location of subject property *(Petitioner's Memorandum, Records, pp. 147-155, at 150-151).*

In this regard, the Court notes that the only evidence presented by petitioner are the deeds of sale of condominium units allegedly adjacent to the condominium units it purchased. No witness testified, nor was any evidence presented to prove the aforementioned specifics. Not even the very Deed of Sale of the subject condominium units was presented in evidence, nor was it at the very least attached to the instant petition.

With respect to the second issue, petitioner avers that the contracted selling price of P37,000.00 per square meter as indicated in the Deed of Absolute Sale of the office condominium units located at the 4th and 6th floors of Citibank Center, Paseo de Roxas, Makati City, should be used as the basis for computing documentary stamp taxes, in lieu of the zonal value thereof.

Petitioner tried to prove that the fair market value of similarly situated condominium units, ranges from P30,000.00 to P45,000.00 per square meter, which is allegedly way below respondent's grossly excessive and unconscionable zonal valuation of subject property in the amount of P60,000.00 per square meter. It is petitioner's assertion that the contracted price of P37,000.00 should be used as the basis for computing its documentary stamp tax liabilities.

This Court is not persuaded.

As mentioned earlier, petitioner did not present the Deed of Sale evidencing the purchase of the subject office condominium units which should, at the very least, have formed part of petitioner's basic documentary evidence. What petitioner offered in evidence were only the deeds of sale of the properties allegedly near or adjacent to the office condominium units it purchased. Although these Deeds of Sale *(Exhibits "A, B, C, D, E")* may prove the fact of purchase of these properties, however, looking at these documents alone do not show the basis for the computation of the documentary stamp taxes for the transfer of these properties to the buyers thereof.

In computing documentary stamp tax on deeds of sale and conveyances of real property, Section 196 of the National Internal Revenue Code of 1997 provides that:

> **"SEC. 196. Stamp Tax on Deeds of Sale and Conveyances 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 land, tenement 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 rates herein below prescribed, **based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, <u>whichever is higher</u>**: Provided x x x" (*Emphasis and underscoring Ours)"*

165

It is clear from the above provision that the basis for the computation of the documentary stamp tax is either: (1) the amount of consideration or value received or contracted to be paid; or (2) the fair market value as determined in accordance with Section 6 (E) of the National Internal Revenue Code of 1997; **whichever is higher**.

To consider petitioner's argument that the selling price as stated on the Deed of Sale should be used as the basis for the computation of the documentary stamp tax would be violative of the above provision of law, as well as the provisions of Section 6 (E) of the NIRC of 1997.

Furthermore, the reason why the law requires that the tax base for computing internal revenue taxes arising from the sale or purchase of real property, should be the higher value between the contracted price on the deed of sale, and the fair market value thereof, is to prevent the manipulation of the correct or true value of the real property sold or purchased.

Therefore, petitioner's mere reliance on the comparable fair market value of the adjacent properties, allegedly ranging from P30,000.00 to P45,000.00 per square meter *(Deeds of Sale, Exhibits "A, B, C, D, E", Records, pp. 110-123)*, to show that the zonal valuation of the office condominium units it purchased in the amount of P60,000.00 per square meter is allegedly grossly excessive and unconscionable, cannot be entertained. To the mind of the Court, the deeds of sale of adjacent properties submitted in evidence are self-serving, and do not in any way prove that internal revenue taxes were computed on the basis of the contracted selling prices stated therein.

The last issue as to whether or not petitioner is entitled to a refund of the excess documentary stamp taxes paid on the office condominium units it purchased is ruled in the negative.

Admittedly, petitioner paid documentary stamp taxes on its purchase of the office condominium units located at the 4th and 6th floors of Citibank Center, Paseo de Roxas, Makati City. When these condominium units were purchased, there was already a re-valuation or revision of the zonal values of real property located in Makati City, more particularly the area where the subject real property of this case lies, pursuant to Department Order No. 64-97 dated June 6, 1997. And this revised zonal valuation was the basis for computing the documentary stamp taxes that petitioner paid, being the higher value than the contracted purchase price stated on the subject Deed of Absolute Sale, which, as mentioned earlier, was never presented in court.

Petitioner having paid on the basis of either, the correct zonal valuation, or contracted selling price of subject condominium units, whichever is higher, there could therefore be no "excess or overpayment" of documentary stamp taxes.

It is important to emphasize at this point that the existing Zonal Values of Real Properties in Makati City were determined and approved after the consultation with competent appraisers from both the private and public sectors,

167

and the required public hearing. Hence, the same shall prevail for purposes of determining the proper tax liabilities of the petitioner.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

168