REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNIVERSAL MOLASSES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5467

HON. LIWAYWAY VINZONS-CHATO,
Commissioner, Bureau of
Internal Revenue,
Respondent.

Promulgated: MAR 26 1999 Amargaxx

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DECISION

Petitioner comes to Us for the reversal of a ruling issued by the Respondent, dated February 5, 1997, denying its request for a waiver of surcharge and interest for the alleged late payment of the capital gains tax in the sale of shares of stocks in Eastern Telecommunications Phils., Inc. by herein petitioner to Smart Communications, Inc..

Petitioner, Universal Molasses Corporation (UNIMOLCO), is a domestic corporation with offices at FEMI Building, Aduana Street, Intramuros, Manila.

On July 24, 1996, Petitioner sold its 196,000 shares in Eastern Telecommunications Phils., Inc. (ETPI) to Smart Communications, Inc. (Smart) for a total consideration of P226,772,000.00 (Exh. A). The same shares are among those subject of the case entitled Republic of the Philippines versus Jose L. Africa, et al., Civil Case No. 009, before the Sandiganbayan.

Accordingly, on July 31, 1996, Petitioner filed with the Sandiganbayan a "Motion for Entry of Sale in ETPI

Stock and Transfer Book" (Exh. B). On August 8, 1996, the Government, thru the Presidential Commission on Good Government (PCGG), filed a motion with the Sandiganbayan to "Cite Defendant Benedicto and the Parties to the Sale of UNIMOLCO Shares in ETPI in Contempt of Court and to Rescind and/or Annul Said Sale" (Exh. C).

The Sandiganbayan issued a Resolution on December 6, 1996 (Exh. D) denying PCGG's motion and upholding the validity of the aforementioned sale. Consequently, it ordered the entry of said sale as per Certificate of Entry, dated December 17, 1996 (Exh. E).

Petitioner paid the capital gains tax in the amount of P41,434,400.00 relative to the sale on December 24, 1996 (Exh. K). On December 26, 1996, Petitioner wrote the Bureau of Internal Revenue (BIR) requesting for the issuance of a certificate authorizing registration of the subject transaction. But erstwhile, petitioner had already requested for a waiver of the payment of surcharge and interest for late payment of the capital gains tax on the sale involved.

Respondent, on February 5, 1997, issued the assailed ruling (Exh. F) requiring Petitioner to pay the surcharge and interest by virtue of its late payment of the capital gains tax due on the sale of the shares in ETPI to Smart.

On February 18, 1997, Petitioner wrote a letter to the Respondent seeking a reconsideration of his earlier adverse ruling (Exh. G). However, without waiting for Respondent's response thereto and taking into consideration that the 30-day period within which to appeal was about to lapse, Petitioner filed the instant petition on March 5, 1997.

It is the proposition of the Petitioner that the 30-day period within which to pay the capital gains tax should commence on December 17, 1996, the date when the Sandiganbayan directed the entry of sale in ETPI's Stock and Transfer Book. Respondent, disagrees, thereby contending that the Deed of Absolute Sale having been executed on July 24, 1996, the capital gains tax due on the sale should be paid within thirty (30) days therefrom.

To support its case, Petitioner presented both testimonial and documentary evidence. Respondent, on the other hand, just submitted the case for decision since the same raises no factual dispute but pure questions of law.

The issue can be simplified, thus: Whether or not there was late payment of the capital gains tax due on the sale of shares of stock in ETPI by Petitioner to Smart thereby making the former liable for surcharge and interest under Sections 248 and 249 of the Tax Code, as amended.

We rule in favor of the Petitioner.

In the contract of sale executed between the Petitioner and Smart, the former represents and warrants, among other things, that upon the delivery of the subject shares to the buyer, the latter will acquire good and valid title to the possession of the same. As already adverted to, the subject shares were among those under litigation before the Sandiganbayan. Thus, the Motion for Entry of Sale in ETPI's Stock and Transfer Book by herein Petitioner. However, the legality of such sale was questioned by the Government. Therefore, until the issue was resolved on December 6, 1996, the capital gains tax due on the sale should be made payable within thirty (30) days therefrom. Since Petitioner herein paid the capital gains tax on December 24, 1996 within the reglementary period, it should not be held liable for the payment of surcharge and interest.

By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent (Art. 1458, New Civil Code). The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price (Art. 1475, *supra*; **Jovan Land, Inc. v. CA**, 268 SCRA 160). The essence of a contract of sale is the transfer of title or agreement to transfer it for a price paid or promised (**Schmid and Oberly, Inc. v. RJL Martinez Fishing Corp.**, 166 SCRA 493). It is not required that the seller be the owner at the time of perfection. But he must be the owner at the time of delivery (Art. 1459, *supra*; **Martin v. Reyes,** 91 Phil 666). The Civil Code provides that delivery can either be (1) actual (Art. 1497) or (2) constructive (Arts. 1498-1501). Symbolic delivery (Art. 1498), as a species of constructive delivery, effects the transfer of ownership through the execution of a public document. Its efficacy can, however, be prevented if the vendor does not possess control over the thing sold, in which case this legal fiction can yield to reality (**Power Commercial and Industrial Corp. v. CA**, 274 SCRA 597.)

In the case at bar, the validity of the sale of the shares of stocks was questioned and consequently it could not be entered in ETPI's Stock and Transfer Book without the approval of the Sandiganbayan. Consequently, no delivery can be effected by the seller prior said court's resolution. In **Danguilan v. IAC, 168 SCRA 22,** the Supreme Court had this to say:

> As for the argument that symbolic delivery was effected through the deed of sale, which was a public instrument, the Court has held: "The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is placed `in the hands and possession of the vendee.' (Civil Code, Art. 1462). It is true that the same article declares that the

> execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. <u>But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields-to delivery has not been effected."</u> (Underscoring supplied.)

Although the Supreme Court ruled that delivery of the certificates of stocks, whether actual or constructive, is not essential for documentary and science stamp taxes to attach (**CIR v. Construction Resources of Asia, Inc. and the CTA**, 145 SCRA 671, citing ***Phil. Consolidated Coconut Ind., Inc. v. Coll. of Int. Rev.***, 70 SCRA 22), it must be emphasized, however, that documentary and science stamp taxes are taxes on the privilege of issuing shares of stocks. Capital gains tax, on the other hand, is a tax on income. Therefore, capital gains tax arises only upon the consummation of the sale.

A consummated sale is a sale that divests the title and ownership of the owner over the thing sold (**Padasas**

v. CA, 82 SCRA 259). It follows that unless the questioned sale is entered in ETPI's Stock and Transfer Book and new certificates of stocks are issued in favor of the new owner (Smart), UNIMOLCO remains the registered owner of said stocks. Section 63 of the Corporation Code provides that no transfer, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation. Thus, as between the parties, the requisite for a valid transfer is merely the delivery of the certificate indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. But in order to be valid as against third persons and the corporation, the transfer of the shares must be entered and noted upon the books of the corporation. (The Corporation Code of the Philippines, De Leon, 1993 Ed., pp. 485-486). An unregistered transfer of shares is valid and binding as between the parties but it is invalid as to the corporation and as against third persons and corporation's creditors. (*Ibid*, p. 491.)

As already discussed, the sale could not be entered in ETPI's Book without the approval of the Sandiganbayan. Inasmuch as the validity of the sale was questioned by the Government, resolution thereof is necessary. In short, no new certificates can be delivered to buyer, nor registration of the same can be effected until the

Sandiganbayan issued its resolution on December 6, 1996. And as herein Petitioner paid the capital gains tax on December 24, 1996, no liability for surcharge and interest arises.

There is no dispute that a share of stock differs from a certificate of stock. The former represents the right or interest of a person in the corporation while the latter is the written evidence of that right or interest. Shares of stocks are personal property and the owner, as in the case of other personal property, has an absolute and inherent right as an incident of his ownership, to sell and transfer the same at will, subject to several exceptions. (The Corporation Code of the Phil., De Leon, *supra.*) The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. (**Phil. Consolidated Coconut Ind., Inc. v. Collector of Int. Rev.**, *supra.*) A certificate of stock is not necessary to render one a stockholder in a corporation. Nevertheless, a certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. (**Tan v. SEC**, 206 SCRA 740). It can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. So that documentary stamps on certificate of stock issued by a corporation but the issuance of which was suspended by the Securities and Exchange Commissions upon being questioned by a party, was held not to be due for it cannot be said that the stockholder can freely exercise the attributes of being an owner. (**Phil. Consolidated Coconut Ind., Inc. v. Coll. of Int. Rev.**, *supra.*) Indubitably, until registration is accomplished, the sale or transfer, though valid between the parties, cannot be effective as against the corporation. Thus, the unrecorded buyer or transferee cannot enjoy the status of a stockholder; he cannot vote nor be voted for, and he will not be entitled to the dividends. (The Corporation Code, Vol. II, 1990 Ed., p. 301; **De Erquiaga v. CA**, 179 SCRA 1). Until challenged in a proper proceeding, a stockholder according to the books of the company has a right to participate in any meeting. (**Price and Sulu Development Co. v. Martin**, 58 Phil 707). A person who has purchased stock, and who desires to be recognized as a stockholder, for the purpose of voting, must secure such a standing by having the transfer recorded upon the books. (*Ibid*).

Petitioner also relied upon a ruling issued by the respondent (Exh. H) suspending the imposition of taxes pending resolution of the cases filed before the Sandiganbayan. As evinced by the records, herein Petitioner paid the capital gains tax within thirty days from the issuance of resolution by the Sandiganbayan. It can rationally be inferred that Petitioner had no intention of delaying the payment of said tax. Pendency of the court action taken by the government to annul the sale justifies the non-payment of tax. Petitioner can not be held liable for surcharge and interest when at the time these penalties were supposed to be incurred it was still in quandary as to whether or not the validity of said sale would be upheld by the Sandiganbayan. Logically, only when there is a valid sale that liability for capital gains tax arises. Over time, courts have recognized with almost pedantic adherence that what is inconvenient or contrary to reason is not allowed in law (**Republic v. CA**, 258 SCRA 712)

WHEREFORE, in view of all the foregoing, the ruling of the respondent Commissioner of Internal Revenue holding the petitioner liable for the payment of surcharge and interest for late payment of capital gains tax is hereby reversed and nullified.

Without pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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UNIVERSAL MOLASSES CORPORATION,
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HON. LIWAYWAY VINZONS - CHATO,
Commissioner, Bureau of Internal
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DISSENTING OPINION

The instant petition seeks to reverse the BIR Ruling issued by Respondent Commissioner, which denied Petitioner's request for a waiver of the surcharge and interest for alleged late payment of the capital gains tax on the sale of shares of stock owned by herein Petitioner to Smart Communications, Inc..

The majority opinion ruled in favor of the Petitioner and consequently reversed and nullified the said BIR Ruing thereby absolving it from payment of surcharge and interest.

With all due respect to the opinion of my esteemed colleagues, I submit that the petition must be denied and Petitioner be ordered to pay the surcharge and interest arising from the late payment of capital gains tax on the aforementioned sale of shares of stock.

Petitioner alleges that the contract of sale executed on July 24, 1996 was conditional and deemed perfected only upon the fulfillment of the following suspensive conditions, to wit:

> 1) Entry of the sale of the 196,000 shares of stocks in the ETPI Stock and Transfer Book which is in the possession and control of the Sandiganbayan;
>
> 2) Delivery of the Stock Certificates covering the 196,000 ETPI shares to Smart Communications free from any liens, encumbrances and claims from third persons; and
>
> 3) Pending compliance with or the fulfillment of the aforementioned conditions, the purchase price to be paid by Smart Communications to petitioner was deposited under escrow with Traders Royal Bank.

In other words, pending the fulfillment of the above conditions, there was no perfected contract of sale. Taking into account the fact that it was only on December 17, 1996 when the entry of sale in the Stock and Transfer Book of ETPI was ordered by the Sandiganbayan, herein Petitioner avers that the 30-day period to pay the capital gains tax should be counted therefrom.

I do not agree. A reading of the said contract leads me to conclude otherwise. A perfected contract of sale may either be absolute or conditional, depending on whether the agreement is devoid of, or subject to, any condition on the passing of title of the thing to be conveyed or on the obligation of the party thereto

(**Romero v. CA, 250 SCRA 223**). Nowhere in the contract was it stipulated that its validity would be contingent upon the performance of the aforecited conditions. In short, the contract was absolute. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent" (Art. 1458, New Civil Code; **PNB v. CA, 272 SCRA 291**). It is a fundamental principle that before a contract of sale can be valid, the following elements must be present, *viz*: (a) consent or meeting of the minds; (b) determinate subject matter; (c) price certain in money or its equivalent (**Jovan Land, Inc. v. CA, 268 SCRA 160; Coronel v. CA, 263 SCRA 15; Engineering & Machinery Corp. v. CA, 252 SCRA 156**). Corollarily, the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price (Art. 1475, New Civil Code, **Jovan Land, Inc. v. CA,** *supra*; **Lim v. CA, 263 SCRA 569; EDCA Publishing & Distributing Corp. v. Santos, 184 SCRA 614; C & C Commercial Corp. v. PNB, 175 SCRA 1; National Grains Authority v. IAC, 171 SCRA 131; Phil. Virginia Tobacco Adm. v. De Los Angeles, 87 SCRA 197**).

In the contract executed between UNIMOLCO and Smart on July 24, 1996, there was already a meeting of the minds as to the subject matter (shares of stocks in ETPI) and the consideration (₱225,772,000.00). A contract of sale being consensual, it is perfected by the mere consent of the parties (**Dalion v. CA, 182 SCRA 892; Balatbat v. CA, 261 SCRA 128**). If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control (Art. 1370, NCC; **Tanguilig v. CA, 266 SCRA 78; Inter-Asia Services Corporation (International) v. CA, 263 SCRA 408**). Documents must be taken as containing all the terms of the agreement between the parties when there appears to be no ambiguity in the language of said documents nor any failure to express the true intent and agreement of the parties (**Salame v. CA, 239 SCRA 356**).

I concur with the Respondent that the contract was devoid of any proviso to the effect that the non-fulfillment of the conditions enumerated would affect the immediate validity of the sale. The term "condition" in the context of a perfected contract of sale pertains in reality to the compliance by one party of an undertaking the fulfillment of which would beckon in turn the demandability of the reciprocal prestation of the other party (**Romero v. CA**, *supra*). Therefore, the capital gains tax was due and payable within 30 days from July 24, 1996. Inasmuch as the capital gains tax was paid only on December 24, 1996, Petitioner is liable to pay the surcharge and interest thereon.

Sections 248 and 249 of the Tax Code, as amended, provide:

> **SEC. 248.** ***Civil Penalties.*** - (a) There shall be imposed in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the tax within the time prescribed for its payment; xxx
>
> **SEC. 249.** ***Interest,*** *(a) In general.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid. x x x

In relation thereto, Section 7 of Revenue Regulations No. 2-82 is quoted hereunder:

> **SEC. 7.** ***Payment of Tax and Manner of Filing Returns.*** - The tax imposed by Section 5 of these Regulations shall be collected as follows:
>
> (a) *Payment of tax.* -
>
> (1) xxx xxx xxx
>
> (2) *Tax on gains on sale of shares of stock not traded through any local stock exchange.* - The tax on net capital gains shall be paid by the seller on a per transaction basis upon filing the required return within 30 days following each sale or other disposition of shares of stock. (Underscoring supplied.)

The Supreme Court declared that the imposition of surcharge and interest under Sections 248 and 249 is mandatory and automatically due once the tax is not paid on time. The intention of the law is to discourage delay in the payment of taxes due the Government. In this sense, the surcharge and interest are not penal but compensatory, for the concomitant use of funds by the taxpayer beyond the date where he is supposed to have paid them to the government (**Phil. Refining Company v. CA**, 256 SCRA 667; **Rep. v. Lim Tian Teng Sons & Co., Inc.**, 16 SCRA 584). Taxes being the chief source of revenue for the Government to keep it running must be paid immediately and without delay. (**Collector of Internal Revenue v. Yuseco**, 3 SCRA 313).

It is significant to note also that herein Petitioner claims that the Deed of Absolute Sale does not reflect the true intention of the parties. Yet, Article 1359 of the New Civil Code provides for a remedy in such a case. "When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed". Nothing prevented the Petitioner from availing of this remedy. Reasonably, it cannot now declare before this Court that the validity or perfection of the contract was dependent upon the fulfillment of the conditions earlier cited. In fact, nowhere in the contract was it mentioned that the amount or consideration thereof was deposited in escrow pending compliance of said conditions. A deed of sale is considered absolute in nature where there is neither a stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor one giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period (**People's Industrial and Commercial Corp. v. CA, 281 SCRA 206**).

Further, in Petitioner's Motion for Entry of Sale in ETPI's Stock and Transfer Book, it admits that the issuance of the corresponding stock certificates and of the Certificate Authorizing Registration by the BIR is subject to the payment of the capital gains tax; meaning, that there can be no entry of sale in the Stock and Transfer Book of ETPI if there is no clearance and/or Certificate of Authority to Register from the BIR. <u>No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock shall be registered in the books of the corporation unless the receipt of payment of the tax herein imposed is filed and recorded by the stock transfer agent or</u>

secretary of the corporation. x x x (Revenue Regulations No. 2-82, Sec. 8). Succinctly put, the payment of the capital gains tax is not conditioned upon the Authority to Make Entry of the Sale in ETPI's Stock and Transfer Book. Rather, the entry of the said sale and the issuance of the corresponding certificates are subject to the payment of the capital gains tax. Moreover, payment of taxes is not based on a speculation that petitioner's motion may be denied by the court. Taxes are the lifeblood of the government, the primary purpose is to generate funds for the State to finance the needs of citizenry and to advance the common good and so should be collected without necessary hindrance (**CIR v. Algue, Inc., 158 SCRA 9; NPC v. Prov. of Albay, 186 SCRA 198; Collector of Internal Revenue v. Goodrich International Rubber Co., 22 SCRA 256; CIR v. Pineda, 21 SCRA 105**).

Consistently, the capital gains tax becomes due on the sale of subject shares and not when the same was entered in the Stock and Transfer Book of ETPI. As already adverted to, there already existed on July 24, 1996, a perfected contract of sale when UNIMOLCO and Smart had absolutely and reciprocally offered to buy and sell the 196,000 shares in ETPI for ₱226,772,000.00. Note, that the said shares comprised the subject matter of the contract and not the certificate of stock, the two being different. Shares of stocks are units of interest and participation in corporate management, surplus or profits and assets (Commercial Laws of the Philippines, Agbayani, Vol. 3, 1990 Ed., p. 93). A share of stock represents the interest of the holder thereof to participate in the management of the corporation, to share proportionally in the profits of the business and, upon liquidation, to obtain and aliquot part of the corporate assets after all corporate debts have been paid (The Corporation Code, Campos, Vol. II, 1990 Ed., p. 6). A certificate of stock, on the other hand, is a written acknowledgment by the corporation of the interest, right and participation of a person the management, profits and assets of a corporation. (The Corporation Code of the Philippines, De Leon, 1993 Ed., p. 64; Commercial Laws of the Philippines, Agbayani, p. 97). To put it simply, a share of stock represents the right or interest of a person in the corporation while certificate of stock is the written evidence of that right or interest.

It should be stressed too that what was requested by the petitioner was the Entry of Sale in ETPI's Stock and Transfer Book. This goes without saying then that there was already a sale perfected before entry of the same can be entreated before the court.

Petitioner further asseverates that the government thru the PCGG moved for the nullification of the questioned contract of sale since the contract was *void* *ab initio*. But an examination of PCGG's motion, dated August 8, 1996, failed to make Us reach the same determination. For what the government prayed therefor was a rescission and/or annulment of the contract. As the Petitioner pointed out, a void contract is nothing. It does not exist from the very beginning. On the other hand, a rescissible or a voidable contract is valid until rescinded or avoided. Hence, until there is no declaration by the court that the sale is rescinded or voided, then the contract remains valid and binding.

Article VI, Section 28(1) of the 1987 Constitution, mandates that "The rule of taxation shall be uniform and equitable." Uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. (Law of Basic Taxation in the Philippines, Aban, 1st Ed., p. 51). The Supreme Court held that uniformity requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities. **(CIR v. CA, 261 SCRA 236; Juan Luna Subdivision v. Sarmiento, 91 Phil 371)**.

Herein Petitioner argues that the capital gains tax due on the sale is payable only within 30 days from the resolution of the Sandiganbayan, dated December 6, 1996. This is in conformity with the aforecited provision of the Constitution and in consonance with the off-quoted ruling of the BIR that when the subject matter of the case is pending litigation in court, the tax shall only be due and payable upon resolution of the case by the court.

It is worth emphasizing that the ruling relied upon by the Petitioner involves the suspension of payment of estate tax. However, the subject of dispute in this case is capital gains tax. The two taxes are not similar. An estate tax is paid on the basis of the value of the property inherited by an heir (**Collector of Internal Revenue v. Prieto, 2 SCRA 1007**) while capital gains tax is paid on the income derived from the sale, exchange or disposition of property which is a capital asset (Secs. 24(2) & 33). Thus, the rule on uniformity and equality in taxation finds no application in the instant case.

In sum, there being a valid contract of sale from the moment the Deed of Absolute Sale was perfected on July 24, 1996, liability to pay the capital gains tax thereon arises. Indubitably, there is justifiable ground for the government, particularly the Respondent, to demand for the payment of said tax despite the subsequent opposition by the PCGG. Considering that the Petitioner paid the capital gains tax due on the sale only on December 24, 1996, it is liable to pay the surcharge and interest for its late payment as mandated by law.

WHEREFORE, in view of all the foregoing, I register my dissent to the majority opinion and vote to deny the petition.

RAMON O. DE VEYRA
Associate Judge