REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5665

COMMISSIONER OF INTERNAL REVENUE; REGIONAL DIRECTOR, REVENUE REGION NO. 8, BIR; and CHIEF, ASSESSMENT DIVISION, REVENUE REGION NO. 8, BIR,
Respondents.

Promulgated:
AUG 11 2000

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DECISION

This controversy arose from the assessment issued against Petitioner for deficiency value-added-tax, inclusive of surcharge, interest and penalty, for the fourth quarter of 1996 in the amount of P45,188,708.08.

The facts as contained in the stipulation of facts.

1.01. Petitioner is a domestic corporation duly registered and existing under Philippine laws, with office address at Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila. It is owned, to the extent of forty-five per cent (45%) of its issued and outstanding capital stock, by the Bases Conversion Development Authority (BCDA), a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general. The remaining fifty-five per cent (55%) is owned by private domestic corporations.

1.02. Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, BIR Building, Quezon City, Metro Manila.

1.03. Respondent Regional Director, Revenue Region No. 8, BIR, is the chief of the aforesaid Regional Office, with office address at Atrium Building, Makati City, Metro Manila.

1.04. Respondent Chief, Assessment Division, Revenue Region No. 8, BIR, is the chief if the aforesaid Division, with office address at Atrium Building, Makati City, Metro Manila.

1.05. Petitioner is engaged in the development and sale of real property. It is the owner of, and is developing and selling, parcels of land within a newtown development area known as the Fort Bonifacio Global City (hereinafter referred to as "Global City"), located within Fort Bonifacio, Taguig, Metro Manila (Exh. A).

1.06. The aforesaid area being developed by petitioner was formerly part of the Fort Bonifacio reservation but was sold on February 8, 1995 by the National Government to petitioner by virtue of R.A. No. 7227 and Executive Order No. 40, dated December 8, 1992.

1.07. On January 1, 1996, Republic Act No. 7716 took effect. The said law restructured the valued-added tax (VAT) system by further amending pertinent provision of the National Internal Revenue Code (NIRC) as already amended by Executive Order No. 273 which took effect on January 1, 1988, and imposed a value-added tax on sale of real properties, among others (Sec. 100[a][1][A] of NIRC, as amended by R.A. No.

7716). While prior to R.A. No. 7716 real estate transactions were not subject to VAT, they became subject to VAT upon the effectivity of R.A. No. 7716.

1.08. Petitioner is a duly registered VAT taxpayer (Exh. B).

1.09. To be able to avail of the input tax credit of 8% under Sec. 105, petitioner submitted an inventory listing real properties owned by it with a total book value of P71,227,503,200.00 (Exhs. C & C-1).

1.10. In May 1996, petitioner commenced developing the Global City, and since October 1996, has been selling lots located thereat to interested buyers. Thus, commencing on said date, petitioner became liable to VAT for the first time.

1.11. On October 14, 1996, petitioner executed in favor of Metro Pacific Corporation ("Metro Pacific") two (2) contracts to sell, whereby petitioner as seller agreed to sell, transfer and convey to the latter, and the latter as buyer agreed to purchase and acquire from petitioner, two (2) parcels of land within the Global City designated as Lot 1, Block No. 6, with an area of 5,817 square meters, for a total purchase price of P1,526,298,949.00, and Lot No. 1 Block No. 13, with an area of 4,851 square meters, for a total purchase price of P785,009,018.00, both payable in installments (Exhs. D & D-1).

1.12. For the fourth quarter of 1996, petitioner derived the total amount of P3,498,888,713.60 from its sales of lots, on which the output VAT payable to the BIR was P318,080,792.14 (Exh. E),

1.13. To pay said amount of P318,080,792.14 due to the BIR, petitioner made cash payments totalling P269,340,469.45 and utilized (a) part of its total transitional/presumptive input tax credit of P5,698,200,256.00 to the extent of P28,413,783.00, which is the portion of its total transitional/presumptive input tax credit allocated by petitioner to the two (2) lots sold to Metro Pacific; and (b) its regular input tax credit of P20,326,539.69 on purchases of goods and services.

1.14. On July 28, 1997 and October 29, 1997, petitioner submitted letters dated July 18, 1997 and October 28, 1997, respectively, to the BIR, informing it of the facts alleged in paragraphs 1.11 and 1.12 and requesting the latter's appropriate action on whether petitioner's use of its presumptive input VAT on its land inventory, to the extent of P28,413,783.00, in partial payment of its output VAT for the fourth quarter of 1996, is in order.

1.15. After investigation by the BIR of petitioner's value added tax return for the 4th quarter of 1996, it was recommended that the claimed presumptive input tax on land inventory be disallowed and assessment be issued for deficiency VAT equivalent to the disallowed amount.

1.16. A Pre-Assessment Notice dated December 23, 1997 for deficiency VAT for the 4th quarter of 1996 was issued by the BIR.

1.17. On March 5, 1998, petitioner received an undated letter from the former Commissioner of Internal Revenue wherein the latter disallowed the presumptive input tax claimed by petitioner "arising from land inventory" on the ground that the basis of the 8% presumptive input tax of real estate dealers is limited to the "book value of the improvement", in addition to its inventory of supplies and materials for use in its business, citing Revenue Regulation 7-95 dated December 9, 1995 and Revenue Memorandum Circular 3-96 dated January 15, 1996. The letter further directed petitioner "to pay VAT equivalent to the disallowed presumptive input tax on land inventory in the amount of P28,413,783.00 x x x, including surcharges, interest and penalties by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification" (Exh. G;4).

1.18. In disallowing the input tax credit claimed by petitioner, the former BIR Commissioner relied on regulations and circulars of the BIR issued in implementation of R.A. No. 7716.

1.19. More specifically, the former Commissioner relied on Section 4.105-1 and the "TRANSITORY PROVISIONS" of Revenue Regulations No. 7-95, as follows:

> **Sec. 4.105-1.** ***Transitional input tax on beginning inventories.*** - Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.
>
> However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).
>
> The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.
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> x x x x x
>
> **TRANSITORY PROVISIONS**
>
> (a) **Presumptive Input Tax Credits -**
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> x x x x x
>
> (iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.

> For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996.
>
> x x x x x

1.20. Under the above-quoted regulation, the basis of the input tax credit is the improvements, such as buildings, roads, drainage systems, and other similar structures.

1.21. The former BIR Commissioner also relied on Revenue Memorandum Circular No. 3-96, dated January 15, 1996. This circular merely reiterates the contents of Revenue Regulation No. 7-95 in question-and-answer form.

1.22. By letter dated March 11, 1998 to the former Commissioner of Internal Revenue, which was received by the latter on March 16, 1998, petitioner requested that "the corresponding directive be issued to the Chief, Assessment Division, Revenue Region No. 8, Makati City, for the computation of the surcharges, interest and penalties, and issuance of the required assessment notice", for "the purpose of pursuing FBDC's remedy under Sec. 223[8] of the Tax Reform Act of 1997 on `Protesting of Assessment', and considering that the letter [of the former Commissioner] assumes that `surcharges, interest and penalties' have to be priorly determined `by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification'" (Exh. H).

1.23. Based on the undated letter of the former Commissioner, which made reference to "surcharges, interest and penalties by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification", Pascual M. De Leon, Acting Assistant Chief, Assessment Division, Revenue Region No. 8, Makati City, sent a letter dated May 4, 1998 to petitioner, whereby the former informed the latter that upon computation, there has been found due from petitioner the total amount of

P45,188,708.08, representing deficiency VAT for the 4th quarter of 1996, including surcharge, interest and penalty. The aforesaid letter was received by petitioner on June 4, 1998. Attached to the said letter is an Assessment Notice (Exhs. I & I-1:5).

1.24. On July 2, 1998, petitioner filed with respondent Commissioner, through the Acting Assistant Chief of the Assessment Division, Revenue Region No. 8, a request for reconsideration/protest, pursuant to the provisions of Sec. 228 of the National Internal Revenue Code of 1997, of the letter/assessment notice dated May 4, 1998 (Exh. J).

1.25. In a letter to petitioner dated July 15, 1998, which was received by petitioner on August 10, 1998, respondent Regional Director ruled that the request for reconsideration/protest filed by petitioner was barred by the statute of limitations because it was filed more than thirty (30) days from March 5, 1998, when petitioner received the undated letter of the former Commissioner of Internal Revenue wherein the latter disallowed the presumptive input tax claimed by it (Exh. K).

1.26. In ruling that petitioner's request for reconsideration/protest was barred by the statute of limitations, respondent Regional Director computed the thirty-day period provided for by Sec. 228 of the NIRC from March 5, 1998, the date petitioner received the undated letter from the former Commissioner of Internal Revenue wherein the latter disallowed the presumptive input tax claimed by petitioner.

Petitioner expounds that the disallowance by the former Commissioner of the input tax credit claimed by Petitioner, as well as the assessment notice sent to Petitioner by the Assessment Division of Revenue Region No. 8, are in violation of the provision of Section 105, in relation to Section 100, of the NIRC. Petitioner further avers that the ruling of respondent Regional Director that Petitioner's request for reconsideration/protest was barred by the statute of limitations, and runs counter to Section 228 of the National

Internal Revenue Code of 1997, and should therefore be reversed and set aside. Hence, an appeal to this Court was filed on August 11, 1998.

The issues to be resolved by this Honorable Court, as stipulated by the parties, are the following:

> 4.02. Whether the 8% transitional input tax provided for in Sec. 105 of the National Internal Revenue Code may be based on the value of the taxpayer's beginning inventory of real properties, as claimed by petitioner, or the same may only be based on the value of the improvements, as claimed by the respondents.
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> 4.03. Whether petitioner's request for reconsideration/protest of the assessment sent by the Assessment Division of BIR Revenue Region No. 8 was barred by the statute of limitations.
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>> 4.03.a. Corollary to the foregoing issue, whether the undated letter of the former Commissioner of Internal Revenue, which disallowed the input tax claimed by petitioner, may be treated as an assessment that may be protested administratively under Sec. 228 of the National Internal Revenue Code of 1997.
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>> 4.03.b. Still corollary to the aforesaid issue, whether the assessment for deficiency VAT for the fourth quarter of 1996 in the total amount of P45,188,708.08, including surcharge, interest and penalty, has become final.

Although the following issue was likewise stipulated by the parties, to wit:

> 4.01. Whether the Pre-Assessment Notice dated December 23, 1997 for deficiency VAT for the fourth quarter of 1996 in the amount of P73,135,484.03, was received by the petitioner.

the counselors agreed in open court that all matters relating to the Pre-Assessment Notice will no longer be at issue in this case (TSN, March 3, 1999, pp. 14-16).

We shall first address the issue raised by Respondent that the protest filed by Petitioner was filed beyond the thirty day period allowed by law because an affirmative answer to said issue will prevent this Court from resolving the other issues in this case due to the finality of the assessment.

Respondent posits that the undated letter received by Petitioner on March 5, 1998, is an assessment in itself inasmuch as it specifies the amount and kind of tax due and the taxable period covered, *viz*:

> "Such being the case, the input tax claimed by you arising from land inventory is hereby disallowed for lack of legal basis. You are therefore directed to pay VAT equivalent to the disallowed presumptive input tax on land inventory in the amount of P28,413,783.00 as indicated in your letter to the BIR dated October 29, 1997, including any surcharges, interest and penalties by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification."

Respondent relied upon our Resolution dated January 25, 1996 in the case of **Pascor Realty and Development Corporation, et al. vs. The Honorable Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue**, CTA Case No. 5271, wherein We ruled that "As far as this Court is concerned, the amount and kind of tax due, and the period covered, are sufficient details needed for `assessments'". Respondent further asserts that computation of surcharges, interest and penalties is merely administerial function on the part of the Chief, Assessment Division and that an assessment notice is just a matter of form which does not make the letter to which it is attached the assessment itself.

We do not agree.

Although Respondent adopts the definition that "an assessment is a written notice and demand made by the Bureau of Internal Revenue on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed" (Vitug, Compendium of Tax

Law and Jurisprudence, 1992 Ed., p. 243) ironically, he contradicts himself when he says that the undated letter is already an assessment against Petitioner. Such letter will unerringly reveal that Petitioner's tax liability was not yet definite and final considering that the same was still subject to audit verification. Nor was a payment demanded from Petitioner within a prescribed period. As a matter of fact, the Supreme Court reversed our Resolution in the Pascor case earlier cited when it held, thus:

> "True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. <u>But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments</u>.
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> <u>To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period</u>. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment. xxx
>
> Section 228 of the same law states that said assessment must be protested within thirty days from receipt thereof. <u>Unnecessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.</u>" (Emphases Ours.)

There was also the glaring fact that the Commissioner gave due course to Petitioner's request for issuance of an assessment through an assessment subsequently issued by the Assessment Division. This is but an indubitable manifestation that the Commissioner did not really consider the undated letter as an assessment and an assessment notice a mere formal document.

That the assessment notice which the Commissioner usually sends to taxpayers is in a particular form is a matter administratively facilitated for expediency and convenience. But this does not mean that said assessment notice is a mere formal paper. Note that Section 228 of the NIRC requires that such assessment may be protested administratively within thirty days from receipt thereof. And the regular assessment notice which Respondent dismisses as a mere matter of form contains an important notation, to wit:

> "If you disagree with this assessment, file your protest in writing indicating your reasons with the Commissioner of Internal Revenue, BIR, Diliman, Quezon City or the Regional Director within thirty (30) days from receipt hereof: otherwise, the same becomes final and unappealable pursuant to the pertinent provisions of the National Internal Revenue Code, as amended."

Consequently, it is the letter dated May 4, 1998, with concomitant assessment notice, which constitutes the assessment contemplated in Section 228. This letter was received by herein Petitioner on June 4, 1998. Hence, it is only from this date that the thirty-day period shall commence to run. In other words, the filing by Petitioner of a request for reconsideration/protest on July 2, 1998 with the Commissioner of Internal Revenue was timely. This goes without saying therefore that the assessment against Petitioner for deficiency VAT covering the fourth quarter of 1996 in the total amount of P45,188,708.08, inclusive of surcharges, interest and penalties, has not become final.

With respect to the main issue of this case, Petitioner principally argues that as a real estate dealer, it is entitled to an input tax credit on its beginning inventory equivalent to 8% of the book value of its real properties. This, according to Petitioner, is mandated by the law specifically Sections 100(1)(A) and 105 of the 1996 Tax Code, which provide, thus:

> **SEC. 105.** ***Transitional input tax credits.*** - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. (As added by EO 273).
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> **SEC. 100.** ***Value-added tax on sale of goods or properties.*** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties, sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> (1) The term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
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> > (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
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> x x x x x x x x x

The legal argument of Petitioner rests upon a confluence of the two aforequoted provisions of the Tax Code which, to its mind, clearly categorizes real properties under the term "goods", so that when Section 105 speaks of "beginning inventory of goods" as the basis of the 8% transitional input tax it can only mean that said inventory refers to the book value of the real property.

Petitioner's interpretation resulted in an inventory of P71,227,503,200.00 from which the available transitional input tax amounted to P5,698,200,256.00. As can be gleaned from the parties' Stipulation of Facts, the amount of P28,413,783.00 was taken from the said transitional input tax of P5,698,200,256.00 as part payment of its output tax liability resulting from Petitioner's sale of real properties to Metro Pacific in October of 1996.

Respondent disagreed with Petitioner's interpretation and its subsequent use of the transitional input tax to pay a portion of its output tax liabilities and initially argued in his Answer that the basis of the transitional input tax credit should only be the improvements and not the book value of its land inventory, pursuant to Section 4.105-1 of Revenue Regulations No. 7-95, which provides:

> **SEC. 4.105-1.** ***Transitional input tax on beginning inventories.*** - Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.
>
> <u>However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988)</u>.
>
> The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person. (Underscoring supplied)

The assessment, subject of this case, arose primarily from Respondent's disallowance of the transitional input tax claimed and partly utilized by Petitioner to pay its value-added tax liability resulting from its sale of real property.

Petitioner dismisses the provisions of Section 4.105-1 of Revenue Regulations No. 7-95 as being contrary to the law being implemented, thus in cases where there is a discrepancy between the basic law and a rule or regulation, the basic law prevails, citing numerous Supreme Court cases in support of this doctrine. Petitioner further contends that Section 105 of the Tax Code, in relation to Section 100 thereof, is clear and unambiguous requiring no interpretation or construction but merely calls for its application. These arguments of Petitioner intend to attack the wisdom of Revenue Regulations No. 7-95, particularly Section 4.105-1, which bases the transitional input tax on the value of the improvements as so defined therein.

We disagree with the arguments of Petitioner for two reasons: one, we do not believe that Section 4.105-1 of Revenue Regulations No. 7-95 is contrary to the provisions of Sections 100 and 105 of the 1996 Tax Code and second, seldom do we find tax provisions to be so crystal clear as to be simply applied without taking into account numerous other factors, especially when it comes to transitional input tax credits, which term alone conjures up so many concepts and definitions precisely giving rise to the present controversy.

To understand the meaning of "transitional input tax credit" as provided under Sections 104 and 105 of the 1996 Tax Code, it is necessary to unearth its history from the time it was first introduced under the original VAT Law of 1988 (Executive Order No. 273) up to its development under the present Tax Code now popularly known as the Tax Reform Act of 1997 which took effect on January 1, 1998.

As earlier mentioned, the provisions of Section 105 of the Tax Code on transitional input tax credit was first introduced by the original VAT Law pursuant to Executive Order No. 273 which took effect on January 1, 1988. To implement the provisions of Section 105, the Bureau of Internal Revenue issued Revenue Regulations No. 5-87 specifically Section 26(b) which provides as follows:

SEC. 26. ***Transitory provisions.*** - x x x

(b) Transitional input tax credits. - *(1) Manufacturers, producers and importers.* - The unused deferred tax credit as of December 31, 1987 shall be allowed as input tax credits to all original sellers subject to the value-added tax for the first time, provided that they have registered in accordance with the provisions of Section 107. For this purpose, the amount appearing in their books of accounts and corroborated by the amount reflected in the sales tax return as of December 31, 1987 shall be initially accepted as the transitional input tax credit which shall be carried over as allowable tax credits against output tax less any amount for which an application for the issuance of a tax credit certificate has been filed. In the case of corporations filing their sales tax returns on a fiscal quarter basis, they shall file a short period return for the period ending December 31, 1987 which in addition to their ledger account of deferred tax credit shall be the basis of the transitional input tax credits which will be provisionally allowed.

(2) Inventory of goods, not for sale. - For goods, other than capital goods, not for sale but purchased for use in the business in their present condition, and which are not intended for further processing, which are on hand as of December 31, 1987, a presumptive input tax equivalent to 8% of the value of the goods shall be allowed, which amount may be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

(3) Inventory of goods for sale. - For goods purchased with the object of resale in their present condition, the same presumptive input tax equivalent to 8% of the value of the goods unused as of December 31, 1987 shall be allowed, which amount may also be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

x x x x x x x x x

From these provisions, we can see that the purpose of granting transitional input tax credit to be utilized as payment for output VAT is primarily to give recognition to the sales tax component of inventories which would qualify as input tax credit had such goods been acquired during the effectivity of the VAT Law of 1988. It must be remembered that the VAT Law abolished privilege taxes, percentage taxes and, more importantly, the sales tax on original or subsequent sale of articles. These taxes were substituted with the VAT at the constant rate of 0% or 10%. The transition or passage from the sales tax system to the value-added tax system, particularly in 1988, left many manufacturers, producers and importers with inventories consisting of goods upon which sales taxes were already paid or passed on as part of the invoice price or acquisition cost. To be able to utilize the sales taxes, the VAT Law of 1988 included a provision granting these taxpayers the benefit of transitional input tax credit to be utilized to pay for their VAT liability under the present system. The value of their transitional input tax credit corresponds to 8% of the value of their beginning inventories as prescribed by Revenue Regulations No. 5-87. Respondent in his memorandum offered another perspective as to the purpose of granting the transitional input tax credit when he stated thus:

> "The basic principle or the rationale of the transitional input tax credit for inventories brought into the VAT regime, during the transition of the business from non-VAT to VAT, is to prevent the cascading of the VAT or sales tax in the subsequent turnover of inventories, in order to avoid imposition of a tax against tax or VAT against VAT and thus prevent double taxation of inventory, since the VAT is only intended as a tax on the value added on every turnover of the inventory until it reaches the ultimate consumer against whom the full burden or cost of the tax is indirectly passed on as a part of his acquisition cost."

With the enactment of Republic Act No. 7716 in 1996, the original VAT Law of 1988 was amended to widen its tax base to include other sale of goods and services not previously subject to VAT. Republic Act No. 7716 is popularly known as the E-VAT law. The E-VAT law now included the sale of real properties as subject to the 10% VAT, amending for this purpose Section 100 of the Tax Code. Under the VAT Law of 1988, the term "sale of goods" was confined to the sale of movable, tangible objects, but under the E-VAT Law it now included the sale of immovable property as in real properties (see aforequoted Section 100 of the 1996 Tax Code).

The amendments introduced by the E-VAT Law did not touch the provisions of Section 105 on transitional input tax credit; it remained the same with the same purpose as when it was first introduced by the VAT Law of 1988. The transitional input tax credit under the E-VAT Law now applied to persons or entities who were not subject to the VAT prior to the effectivity of the E-VAT Law but were now under its coverage such as real estate dealers. The purpose again was to provide these taxpayers with the benefit of utilizing the VAT or sales tax component of their inventories to pay for its output VAT liability under the E-VAT Law. Why, it must be asked, do these taxpayers have a VAT component on their beginning inventories, when they were exempt from paying the VAT under the original VAT Law of 1988? The answer is that these taxpayers may have purchased goods or services where the VAT was passed on to them as part of the invoice price or acquisition cost therefore the VAT passed on to them should qualify as their tax credit in paying their output VAT because this benefit is granted explicitly under the provisions of Section 104 of the 1996 Tax Code which provides, thus:

> **SEC. 104.** ***Tax Credits.*** - (a) *Creditable Input tax.* - Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 108 hereof on the following transactions shall be creditable against the output tax:
>
> "(1) Purchase or importation of goods:
>
> "(A) For sale; or
>
> "(B) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> "(C) For use as supplies in the course of business; or

"(D) For use as materials supplied in the sale of service; or

"(E) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

"(2) Purchase of services on which a value-added tax has been actually paid.

"The input tax on domestic purchase of goods or properties shall be creditable:"

x x x x x x x x x

But because they were not covered by the VAT Law prior to the amendments introduced by the E-VAT Law, the latter law now provides them with the benefit of transitional input tax credit on their beginning inventories equivalent to 8%. It must be noted that even the Tax Reform Act of 1997 which took effect on January 1, 1998 did not touch the provisions of Section 105 (now Section 111 (A)) on transitional input tax credits. The amendments only consisted in adding a provision concerning presumptive input tax credits. It is the composition or meaning of this inventory that brought forth the present controversy. Petitioner contends that the inventory refers to the book value of the real properties while Respondent insists that it should be based on the improvements.

This issue cannot be resolved without an analysis of the nature and history of the transitional input tax credit. Where a statute has been enacted which is susceptible of several interpretations there is no better means for ascertaining the will and intention of the legislature than that which is afforded by the history of the statute **(Greenfield vs. Meer, 77 Phil. 394).**

The law granted the transitional input tax credit because the lawmakers were concerned that the imposition of the VAT might give rise to inequity if the taxes already paid or passed on to the taxpayer could not be utilized due to the transition from the sales tax system to the VAT system or in the case of the E-VAT law, the transition from being exempt from VAT to being subject to VAT as in the case of real estate dealers. We can now see that the rationale in granting the transitional input tax credit also serves as its condition for its availment as a benefit. Inherent in the law is the condition of prior payment of VAT or sales taxes. The facts of this case show that Petitioner purchased the real properties from the National Government in 1995 under a VAT-free sale transaction because the Government as seller was tax-exempt hence did not pass on any VAT or sales tax as part of the purchase price paid by Petitioner. Besides, in 1995 sale of real properties was still exempt from VAT. This fact alone suffices to exclude the Petitioner from availing of the transitional input tax credit provided by law. To base the 8% transitional input tax on the book value of the land is to negate the purpose of the law in granting such benefit. It would be tantamount to giving an undeserved bonus to real estate dealers similarly situated as Petitioner which the Government cannot afford to provide.

Corollary to our findings that Petitioner was wrong in basing its transitional input tax credit on the book value of its real properties, is our firm conclusion that Respondent was correct in basing the 8% transitional input tax credit on the value of the improvements on the land such as buildings, roads, drainage systems and similar structures constructed on or after the effectivity of Executive Order 273, pursuant to the wordings of Section 4.105-1 of Revenue Regulations No. 7-95 *(supra)*. Such basis is consistent with the purpose of the transitional input tax credit because when a real estate dealer puts up improvements on the real properties as those enumerated in Revenue Regulations No. 7-95, VAT is necessarily passed on to them either as part of the acquisition cost of the materials used in building the improvements or as part of the cost of the services rendered in building the same. So in the event those lots with improvements are sold by the dealers upon the effectivity of the E-VAT law or thereafter, the VAT passed on to them can be utilized to pay their output VAT liabilities. It is wrong therefore for the Petitioner to state that Section 4.105-1 of Revenue Regulations No. 7-95 is contrary to law, rather we find it to be consistent and in harmony with the law it seeks to implement. Construction given to a statute by administrative agencies charged with the interpretation and application of the statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws (Nestle Philippines vs. Court of Appeals, 203 SCRA 504).

WHEREFORE, in view of all the foregoing, the instant Petition for Review is **hereby DENIED.** Petitioner is ordered to pay the assessed amount of P45,188,708.08 to the Respondent Commissioner of Internal Revenue plus 20% delinquency interest per annum from June 1, 1998 until fully paid pursuant to Section 249 of the 1996 Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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