REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTA PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9234

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

APR 06 2018 1:35 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration Re: Decision dated 28 November 2017**, filed on December 14, 2017, without petitioner's Comment per Records Verification Report dated January 23, 2018; and

2. petitioner's **Motion for Reconsideration"**, filed on December 14, 2017, with respondent's

Comment/Opposition Re: Petitioner's Motion for Reconsideration, filed on January 17, 2018.

Both parties seek reconsideration of this Court's Decision dated November 28, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Petitioner is **ordered to pay** the deficiency donor's tax of **P48,259,401.75** inclusive of 25% surcharges pursuant to Section 248(A)(1) of the NIRC of 1997 as amended, computed as follows:

Basic Deficiency Donor's Tax	P 38,607,521.40
25% Surcharge	9,651,880.35
Total	**P48,259,401.75**

> In addition, petitioner is **ordered to pay** deficiency interest of 20% per annum on the basic donor's tax due computed from the date prescribed for its payment until the full payment thereof pursuant to 249(A)(1) of the NIRC of 1997.
>
> **SO ORDERED.**"

In the assailed Decision, it was held that petitioner failed to provide any document aside from the Deed of Sale and Technical Descriptions that could become the basis for the correct valuation of the property in question. Likewise, petitioner failed to refer to any valuation of real property adjacent to barangay Canlubang with similar condition [*i.e.* interior lot-General Purpose (GP)] to the subject property, to show that the respondent failed to consider Department Order (DO) 50-2000.

Petitioner moves for reconsideration of the above ruling based on the following grounds:

> "1. The Honorable Court erred in ruling that 'Petitioner failed to provide any document aside from the Deed of Sale and Technical Descriptions that could become the basis for correct valuation of the property in question'.

1. The Honorable Court erred in ruling that 'Since the FMV of the subject lot is P1,200.00 per square meter as determined by the respondent Commissioner and no valuation was provided in the schedule of values under DO 50-2000 for Interior lot classified for General purpose, the value of the property would now be the value as determined by the Commissioner'.

2. The Honorable Court erred in ruling that Petitioner is liable to pay deficiency donor's taxes of P48,259,401.75 inclusive of surcharges, and deficiency interest of 20% per annum."

According to petitioner, respondent has not established any zonal value for General Purpose classification for Interior lots in DO 50-2000 and respondent cannot presume that the zonal values for General Purpose lots along the road can/may be used for General Purpose Interior lots.

Petitioner submits that this Court should have taken judicial notice of the following official acts of the executive department:

1. BIR Ruling No. 114-99 dated July 29, 1999 issued by respondent; and

2. Department Order No. 33-2005 (DO 33-05) issued by the Department of Finance.

Petitioner contends that it was not remiss in providing the document or manner in which the property in question should be valued when it specifically referred to BIR Ruling No. 114-99. In the said ruling, as well as BIR Ruling Nos. DA-009-03 (dated 14 January 2003) and DA-264-03 (14 August 2003), respondent allegedly stated that:

> "xxx *this Office has already made a determination of the correct value of land for internal revenue tax purposes, where the depth of the lot is deeper than the standard depth of land. In such a case, it is an accepted principle that the area of lot beyond the standard depth is valued*

lower than the frontage area. This is because as the depth of lot increases, the unit value decreases. xxx."

Further, petitioner claims that DO 33-05 established the zonal values for Biñan, Cabuyao, San Pedro, and Sta. Rosa. Of these cities and municipalities, Cabuyao is nearest adjacent to Canlubang, Calamba, or the location of the property in question. Within the municipality of Cabuyao, DO 33-05 provides for zonal values per square meter for General Purpose Interior lots (i.e. Barangay Baclaran, zonal value of P825.00, Banay-banay zonal value of P360.00 and Banlic, zonal value of P365.00).

Moreover, petitioner asserts that since there is no zonal value prescribed for General Purpose Interior lots in DO 50-2000, the next best reference will be the zonal value of General Purpose Interior lots in the barangays of the adjacent municipality.

Petitioner claims that respondent's valuation of P1,200.00 per square meter was wrong because the same will only apply to property in question under the condition that the property is classified as GP and it is along the road.

Petitioner further asserts that assuming the P1,200.00 zonal value per square meter applies, the principles and interpretation laid down in BIR Ruling Nos. 114-99, DA-009-03, DA-264-03 should govern considering the size of the property. Petitioner maintains that if the P1,200.00 zonal value per square meter is to be applied: (a) it should be applied only to the frontage of the property and the frontage area; and (b) it will be inequitable and unjustified to apply the P1,200.00 per square meter on the entire property considering its size.

In the Comment to petitioner's Motion for Reconsideration, respondent states that the BIR Rulings cited by petitioner do not apply in the instant case since these are based only on facts as represented by a taxpayer and made applicable only to the facts and circumstances thereto.

Respondent maintains that the zonal value prescribed for land classified as general purpose is applicable to the subject lot sold by petitioner. General purpose is a rawland, undeveloped and underdeveloped area which has a potential for development into residential, commercial, industrial, institutional, etc must not be less than 5,000 square meters. Based on its definition, general purpose covers land as defined above, regardless of its vicinity. It is the classification, not the vicinity which defines the zonal valuation of the land.

Respondent also contends that petitioner's claim must have factual basis and must be proven by preponderance of evidence. However, it allegedly failed to substantiate its arguments.

As to respondent's Motion for Reconsideration, he moves that a compromise penalty of Fifty Thousand Pesos (P50,000.00) be imposed in addition to the total tax liabilities of petitioner pursuant to Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended for its failure to file return, supply correct and accurate information, pay tax withhold and remit tax and refund excess taxes withheld on compensation. This is also pursuant to Revenue Memorandum Order (RMO) No. 7-2015, in relation to RMO No. 1-90 which provides for the Revised Consolidated Schedule of Compromise Penalties for violations of the NIRC.

After a careful review of the grounds raised in petitioner's Motion for Reconsideration as well as the counter-arguments raised in respondent's Comment, the Court finds no compelling reason to justify the reversal or modification of the Court's findings in the assailed Decision.

Petitioner anchors its motion on judicial notice of executive acts *i.e.* DO 33-05 and BIR Rulings in order to support its arguments that respondent's valuation of P1,200.00 per square meter of the subject property is incorrect.

The Court is not persuaded.

Judicial notice gives the court the discretion to take judicial notice of matters "ought to be known to judges because of their judicial functions". Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not bona fide disputed.[1]

In the case of *State Prosecutors vs. Muro*[2], the doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.

Assuming without conceding that this Court takes judicial notice of the above, still, petitioner merely made suppositions that the above BIR Ruling is applicable in its case. It has been consistently held that an administrative ruling issued by the BIR to a taxpayer's query in one case does not necessarily apply to another case.

Although Courts might uphold administrative rulings especially when there is no showing that they are contrary to law, yet it should be noted that they are not binding to Courts.[3] Rulings which merely embody administrative opinions on queries submitted do not have the force and effect of laws but merely advisory in nature-sort of an information service to the taxpayer.[4]

As to petitioner's submission that since there is no zonal value prescribed for General Purpose Interior lots in DO 50-2000, the next best reference will be the zonal value of General Purpose Interior lots in the barangays of the adjacent municipality under DO 33-05, the same is not considered conclusive.

Petitioner should have adduced sufficient evidence to prove that the zonal valuation in DO 33-05 dated September 29, 2005 is the same as the fair market value of the subject property at the time of sale on September 11, 2009.

It is noteworthy to reiterate that respondent Commissioner of Internal Revenue is authorized to prescribe the fair market value of the real properties pursuant to Section 6(E) of the NIRC of 1997, as

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[1] *Republic of the Philippines vs. Sandiganbayan (Fourth Division) et al.,* G.R. No. 152375, December 13, 2011.
[2] A.M. No. RTJ-92-876, September 19, 1994.
[3] *Commissioner vs. Ledesma,* L-17509, January 30, 1970.
[4] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* CTA Case No. 5711, February 12, 2001.

amended. As correctly stated by respondent in the Formal Letter of Demand, if petitioner was not amenable with the zonal value of the subject property, they should have at least requested from zonal valuation committee for consideration to reduce the zonal value of their property sold at the time of sale.

It must be stressed that in civil cases, the burden of proof is on the plaintiff to establish her case by preponderance of evidence. If [she] claims a right granted or created by law, [she] must prove [her] claim by competent evidence. [She] must rely on the strength of [her] own evidence and not on the weakness of that of [her] opponent.[5]

Accordingly, petitioner's motion should be denied for lack of merit.

Lastly, as to respondent's Motion for Partial Reconsideration, praying for the imposition of a compromise penalty of P50,000.00 in addition to the total tax liabilities of petitioner, the Court likewise finds the same bereft of merit.

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[6] Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that respondent's imposition of compromise penalties, without the consent of petitioner, cannot be sustained.

Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 28 November 2017**, and petitioner's **Motion for Reconsideration** are hereby **DENIED** for lack of merit.

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[5] *Spouses Guidangen vs. Wooden*, G.R. No. 174445, February 15, 2012.

[6] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, G.R. No. L-35266, January 31, 1991.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice