REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CITY GOVERNMENT OF VALENZUELA, represented by City Mayor REXLON T. GATCHALIAN, Petitioner,	**CTA Case No. 9872**
	Members:
- versus -	**UY**, *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.*
HON. CEASAR R. DULAY, in his capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 27 2021 11:32 a.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"PARTIAL MOTION FOR RECONSIDERATION (Of the Decision dated 17 September 2020)"** filed on November 24, 2020, without respondent's comment, despite due notice, as per Records Verification Report[1] dated March 4, 2021. In the said Motion, petitioner prays for the reconsideration of the Court's Decision dated September 17, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby ordered to **REFUND** to petitioner the amount of Four Hundred Eighty Six Thousand Six Hundred Ninety Two and 62/100 (₱486,692.62) representing erroneously collected DST.

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[1] Records Verification Report issued by Records Officer I Leocadia L. De Alday, Records Officer III Rosemarie R. Tera, and Chief Judicial Staff Officer Benjamin D. Pineda, Jr. of the Judicial Records Division.

However, petitioner's claim for the refund of Capital Gains Tax in the amount of One Million Nine Hundred Four Thousand Seven Hundred Thirty Nine and 85/100 (₱1,904,739.85) is **DENIED** for lack of merit.

SO ORDERED."

In support of its Motion, petitioner argues that:

1. The imposition of capital gains tax on ICC after the forfeiture of its property, runs against the basic principle of taxation that it should be equitable.

2. An involuntary sale is subject to capital gains tax only if capital gain can be ascertained from the transaction. We do not apply the presumption of capital gains incessantly in forfeiture proceeding because forced sellers can incur capital losses.

3. The true nature of auction proceedings for satisfaction of real property tax delinquency is not determined by terms used in the documentation but by surrounding circumstances of the forfeiture.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Partial Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that contrary to petitioner's contentions, an involuntary sale is still subject to capital gains tax.

Section 27 (D) (5) of the NIRC of 1997, as amended, states that a capital gains tax of six percent (6%) is imposed on the gains *presumed* to have been realized in the *sale, exchange* or *disposition* of lands and/or buildings, which are not actively used in the business of a corporation, and which are treated as *capital assets* based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the NIRC, whichever is higher.[2]

In the instant case, it cannot be disputed that there was a *sale, exchange, or disposition* of capital assets, within the purview of Section 27 (D) (5) of the NIRC of 1997, as amended.

It is undisputed that the subject property was auctioned by the City Government of Valenzuela due to ICC's failure to pay real property tax.[3] In view of the failure of ICC to redeem the property within the prescriptive period, ownership of the subject property was transferred to the City Government of Valenzuela,[4] in accordance with Section 263 of the Local Government Code.

According to Section 263 of the Local Government Code, the City Treasurer is impelled to ***purchase*** the property on behalf of the city, in the absence of a bidder.[5] If the property is not redeemed within one year from the date of forfeiture, ownership shall be vested on the LGU concerned.

In this case, the *Certificate of Sale of Delinquent Real Property to City of Valenzuela*[6] attested to by Adelia E. Soriano, ICO-Office of the City Treasurer, states that there was no bidder at the public auction of the delinquent real property, and the subject property was ***sold*** to the City of Valenzuela. Thus, contrary to petitioner's contention, the ownership of the subject property was transferred through a *sale, exchange, or disposition*, within the purview of Section 27 (D) (5) of the NIRC of 1997, as amended, despite the alleged involuntary nature thereof. Accordingly, the subject transaction is subject to the imposition of capital gains tax.

Reference is likewise made to Section 2 of RR No. 9-2012,[7] which discusses the taxability of real property, in case of non-

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[2] *Commissioner of Internal Revenue vs. Aquafresh Seafoods, Inc.*, G.R. No. 170389, October 20, 2010.

[3] Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Stipulation of Facts, par. 1, Docket, p. 154.

[4] Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Stipulation of Facts, par. 2, Docket, pp. 154 to 155.

[5] *City of Davao vs. The Intestate Estate of Amado S. Dalisay, etc.*, G.R. No. 207791, July 15, 2015.

[6] Exhibit " P-11" and " R-11," Docket, p. 176.

[7] SUBJECT: Implementing Sections 24(D)(1), 27(D)(5), 57, 106 and 196 of the National Internal Revenue Code of 1997 on Non-Redemption of Properties Sold During Involuntary Sales.

redemption of properties sold during involuntary sales, to wit:

> "**SEC. 2.** ***Taxability of Owner's/Mortgagor's Failure to Redeem His Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period***. - In case of non-redemption of properties sold during involuntary sales, **regardless of the type of proceedings and personality of mortgagees/selling persons or entities**, the capital gains tax (CGT) imposed under Sections 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due.
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> **The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale**, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.
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> x x x x." *(Emphasis supplied.)*

From the foregoing, it is clear that regardless of the type of proceedings, (*i.e.*, the involuntary nature of the sale, exchange, or disposition of the subject property), and the personality of the mortgagees/selling persons or entities, capital gains tax would be imposed, in case of non-redemption of properties sold during involuntary sales.

On the other hand, petitioner fails to cite any provision of law, regulation, or jurisprudence to support its position that the subject transaction should be exempted from the payment of capital gains tax.

Settled is the rule that exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims tax exemption must point to a **specific provision of law** conferring, **in clear and plain terms**, exemption from the common burden[8] **and prove, through substantial evidence**, that it is, in fact, covered by the exemption so claimed.[9]

Accordingly, in the absence of any legal basis or justification, which would exempt either the petitioner or the subject transaction from the imposition of capital gains tax, this Court finds no reason to depart from Our ruling upholding the imposition thereof.

WHEREFORE, premises considered, the instant ***"PARTIAL MOTION FOR RECONSIDERATION (Of the Decision dated 17 September 2020)"*** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[8] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) vs. Commissioner of Internal Revenue,* G.R. No. 213446, July 3, 2018, citing *The City of Iloilo vs. Smart Communications, Inc. (SMART),* 599 Phil. 492, 497 (2009).
[9] *Id.*, citing *Quezon City vs. ABS-CBN Broadcasting Corp.*, 588 Phil. 785, 803 (2008).