REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNIMASTER CONGLOMERATION INCORPORATED,
Petitioner,

-versus-

TACLOBAN CITY GOVERNMENT, PRIVATIZATION AND MANAGEMENT OFFICE, PHILIPPINE TOURISM AUTHORITY AND PROVINCE OF LEYTE,
Respondents.

CTA EB No. 901
(CTA OC No. O12)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:
AUG 22 2014 3:30pm

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DECISION

***CASTAÑEDA, JR., J.*:**

Assailed in the Petition for Review under Section 11 of R.A. 9282[1] are a) the Decision dated November 15, 2011 ordering Unimaster Conglomeration, Inc., the payment of real property tax due of P22,826,902.20 for the years 1995 to 2004, and b) the Resolution dated April 17, 2012 denying its Motion for Reconsideration for lack of merit in the case docketed as CTA OC No. O12, entitled, "*Tacloban City Government, represented by OIC City Treasurer, Cesar Separa v. Leyte Park Hotel, Inc., as represented by*

[1] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

its owners namely: Province of Leyte, represented by Leyte Governor Jericho Petilla; Philippine Tourism Authority (PTA), represented by its General Manager Robert Dean Barbers; Asset Privatization Trust (APT), represented by its Chief Executive Trustee, Mr. Gonzalo T. Santos, Jr.; its Administrator: Mr. Wilson Chan; and Unimasters Conglomeration, Inc., represented by its President, Wilson Chan."

THE FACTS

Unimaster Conglomeration, Inc. ("petitioner") is a corporation duly organized and existing under the laws of the Republic of the Philippines.[2]

Tacloban City Government and Province of Leyte are local government units; Privatization and Management Office ("PMO") is the successor of the now defunct Asset Privatization Trust ("APT") affiliated with the Department of Finance[3]; and Philippine Tourism Authority ("PTA") now identified as Tourism Infrastructure and Enterprise Zone Authority ("TIEZA") is an attached agency of the Department of Tourism[4] (Tacloban City Government, Province of Leyte, PMO and PTA are collectively known as "respondents").

Leyte Park Hotel Inc. ("LPHI") was organized to engage in hotel activities and other similar services.[5]

As of December 31, 1981, LPHI incurred loan obligations from the Development Bank of the Philippines in the amount of P187,062,161.00. Consequently, APT filed a foreclosure action against LPHI's real and personal properties before the Regional Trial Court ("RTC") of Tacloban through the Office of the Clerk of Court and Ex-Officio Sheriff.[6]

On March 8, 1990, Deputy Sheriff Luia Capuaco issued a certificate of sale pursuant to the extra-judicial foreclosure of chattel mortgage covering LPHI's chattels.[7]

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[2] Rollo, p.4.
[3] Executive Order No. 323.
[4] Title XIII – Tourism, Section 21, Chapter 6 of The Administrative Code of 1987.
[5] Docket, CTA Case No. O12, p.1050.
[6] Docket, CTA Case No. O12, p.1050.
[7] *Id.*

On September 25, 1990, respondent Province of Leyte filed a civil case, entitled, "*Province of Leyte v. Leyte Park Hotel, Inc. et al.*" before the RTC of Tacloban Branch 7.[8]

On May 5, 1994, the RTC of Tacloban promulgated a Decision in conformity with the Compromise Agreement, the pertinent excerpts state:

1. APT shall foreclose the subject real property, after which it shall have full power and authority to dispose or sell the real and personal properties comprising Leyte Park Hotel on behalf of the parties herein;

2. The net sales proceeds of the assets shall be shared by the parties as follows:

   APT 34%
   Province of Leyte...26%
   Philippine Tourism Authority.................................40%

3. Any and all offers of third parties to purchase the assets received by one of the parties shall be communicated to the others, and the base price, selling price and the name of the buyer shall also be communicated to the other parties for their approval before any sale is consummated.

4. That expenses incurred in conjunction with the sale of said properties, as well as taxes and separation benefits of all LPH personnel, shall be borne proportionately by the parties in accordance with the extent and amount of their respective shares as above specified.[9]

On September 15, 1994, petitioner and the owners of LPHI excluding respondent Province of Leyte, executed a contract of lease with a lease duration of twelve years.[10] On the same day, they also entered into a memorandum of agreement stipulating the following:

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[8] *Id.* See Docket, CTA OC No. 12,pp.435 & 1050.
[9] Docket, CTA OC No. 12, p. 1051.
[10] Docket, CTA OC No. 12, Joint Stipulation of Facts and Issued, p. 706, Exhibit "G".

"WHEREAS, under the aforestated Compromise Agreement, it was agreed among the parties that should APT be able to dispose and sell the real and personal properties comprising the Leyte Park Hotel, the net sales proceeds of said assets shall be shared by the parties as follows:

APT...34%
Province of Tacloban...26%
Philippine Tourism Authority...................................40%

WHEREAS, APT, for and in behalf of the parties, is leasing the Leyte Park Hotel to Unimasters Conglomeration Incorporated under the contract of lease dated September 15, 1994, (the "Lease Contract"), a copy of the Lease Contract is hereto attached as annex "A" hereof;

WHEREAS, the parties have agreed that the net rental proceeds under the Lease Contract, shall be shared among the parties in the same proportion as the sales proceeds, set forth above;

WHEREAS, the parties have agreed that taxes on the Leyte Park Hotel including back taxes and all expenses incurred in conjunction with the lease of said properties shall be borne proportionally by the parties in accordance with the extent and amount of their respective shares as above specified;

WHEREAS, the LESSEE under the Lease Contract has undertaken to advance the payment of accrued utility bills which remain unpaid at the time of the execution of the Contract of Lease, subject to the reimbursement by APT;

WHEREAS, the shares of PTA and the Province of Leyte in the rental payments under the Lease Contract shall be held by APT until such time that the advances made by

> the Lessee under the WHEREAS clause immediately preceding have been liquidated in full."[11]

LPHI through its Administrator Mr. Wilson Chan made partial payments of real property taxes for years 1995 to 1997 evidenced by official receipts issued by the City Treasurer.[12]

Respondent Province of Leyte earlier filed another complaint for injunction against respondent Tacloban City Government represented by Hon. Alfredo Romualdez, Sr. and City Treasurer Erlinda Reyes before RTC Tacloban Branch 9. In the Decision dated February 15, 2002, the RTC decreed that:

> WHEREFORE, premises considered, judgment is hereby rendered finding the complaint/petition for prohibition/injunction filed by the petitioner against the respondents so as to enjoin/prohibit the latter to effect the warrant of levy they had issued to the herein petitioner in order to collect from the petitioner the realty tax of the Leyte Park Hotel Inc. proper or impressed with merit.
>
> Accordingly, respondents City of Tacloban, represented by the Hon. Alfredo Romualdez, Sr. and City Treasurer Erlinda Reyes are hereby enjoined or prohibited from levying the property of the petitioner/plaintiff in order to answer for the unpaid assessed realty tax of the Leyte Park Hotel, Inc.[13]

Respondent Tacloban City Government through City Treasurer Erlinda Reyes sent several demand letters to Mr. Wilson Chan on petitioner's behalf, to satisfy LPHI unpaid real property taxes of P23,377,353.08.[14]

The failure to pay LPHI's real property taxes prompted respondent Tacloban City Government to file a complaint for collection of sum of money against LPHI and petitioner, docketed as CTA OC No. O12 with the First Division of the Court of Tax Appeals ("Court in Division") on December 15, 2004.[15]

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[11] Docket, CTA OC No. 12, pp.548- 549, Exhibit "H".
[12] Docket, CTA OC No. 12, Joint Stipulation of Facts and Issues, p. 701.
[13] Exhibit "I".
[14] Docket, Joint Stipulation of Facts and Issues, CTA OC No. O12, p. p.706
[15] Docket, CTA OC No. O12, p. 1053.

On June 10, 2005, the Court in Division resolved to grant the motion for leave to file amended complaint and to admit the attached amended complaint impleading respondents Province of Leyte, PTA and APT as defendants. The defendants filed their respective Answer.

On November 15, 2011, the Court issued a Decision ordering petitioner to pay respondent City Government of Tacloban the reduced amount of P22,826,902.20 representing unpaid real property taxes for the years 1995 to 2004.[16] The Court in Division ruled that since petitioner is a taxable entity, it is liable for real property taxes for the covered period, excluding the first quarter of the year 2000 which has already prescribed.[17]

Dissatisfied, petitioner moved for the reconsideration of the assailed Decision; however, in the Resolution dated April 17, 2012, the Court in Division denied the same for lack of merit.[18]

THE ISSUES

Unfazed, petitioner sought recourse before the Court *en banc* by filing a petition for review raising the following grounds:

A. The Special First Division of the Honorable Court gravely erred when it held in its questioned Decision and Resolution that petitioner, as the beneficial user of the Hotel, is liable for the payment of real estate taxes notwithstanding the recent pronouncement of the Honorable Supreme Court in the case of *City of Pasig v. Republic of the Philippines* that the Government is liable for the payment of real estate taxes on properties leased to private entities, and the Government's contractual assumption of real estate tax liability. *gr*

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[16] Rollo, pp. 47-90.
[17] *Id.* Penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta (retired) and Associate Justice Caesar A. Casanova.
[18] Rollo, pp. 91-96.

B. The Special First Division of the Honorable Court gravely erred when in the issuance of its questioned Decision and Resolution, it refused to exercise its jurisdiction to accord complete relief to the parties.[19]

Respondents Province of Leyte, PMO and PTA filed their Comments to the Petition.

On September 28, 2012, upon motion of respondent Tacloban City Government, the Court in Division denied the execution pending appeal on levying LPHI's real properties for failure to show basis for its issuance.[20]

Undaunted, respondent Tacloban City Government issued warrants of levy over the properties owned by respondents Province of Leyte, PMO and PTA. Respondent PMO later filed a motion to restrain respondent Tacloban City Government from implementing the warrants of levy.

Invoking Section 9 of R.A. 9282, the Court *en banc* issued a Resolution dated February 7, 2013 granting the suspension of the collection of real property tax subject to posting of surety bond and compliance with the requisites under Supreme Court A.M. No. 04-7-02 dated July 20, 2004.[21]

Respondent Tacloban City Government through a motion for reconsideration questioned the suspension of the collection of taxes, but this was denied by the Court *en banc* in the Resolution dated January 29, 2014.[22]

After the parties filed their memoranda, the case was submitted for Decision.

THE COURT'S RULING

THE BENEFICIAL USE OF LPHI's REAL PROPERTIES IS VESTED gr

[19] Rollo, p. 18.
[20] Docket, CTA OC No. 12, p. 1623.
[21] Rollo, pp. 834-841.
[22] Rollo, pp. 1036-1043.

WITH PETITIONER, A TAXABLE ENTITY. THUS, THESE ASSETS ARE SUBJECT TO REAL PROPERTY TAX PURSUANT TO SECTION 234(a) OF R.A. 7160.

AS THE BENEFICIAL USER OF LPHI's REAL PROPERTIES, PETITIONER IS LIABLE FOR REAL PROPERTY TAXES FOR YEARS 1995 TO 2004.

According to petitioner, in the Supreme Court case of *City of Pasig v. Republic of the Philippines*[23], the liability for real estate taxes rests on the Republic itself if the latter relinquishes its exemption through the abdication of the beneficial use of its realties in favor of taxable persons.

The Court in Division veered away from prevailing judicial interpretation.

Respondents Province of Leyte, PMO and PTA should pay LPHI real property taxes which petitioner is erroneously assessed.

Moreover, Section 11.4, paragraph 5 of the contract of lease dated September 15, 1994 mentioned that real property taxes shall be for the lessors' account.

Obligations arising from contracts have the force of law between the parties, and should be complied with in good faith. Courts have no authority to alter a contract by construction or to make a new contract for the parties. The Court's duty is confined to interpretation of the contract.

The property in this case is a patrimonial property. It is owned by the Republic through respondents Province of Leyte, PMO and PTA. Based on the *City of Pasig* case, the non-payment of taxes on the hotel may lead to the sale of the hotel at public auction, if only to satisfy the tax delinquency. It must be realized that this

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[23] G.R. No. 185023, August 24, 2011, 656 SCRA 271.

consequence prejudices not petitioner but the Government itself, the hotel owner.

Concerning the second ground, although the Court in Division recognizes the rights of all the parties pursuant to the contract of lease dated September 15, 1994, the Court in Division merely ordered petitioner to pay respondent Tacloban City Government real property taxes for years 1995 to 2004.

The dispositive portion of the questioned decision of the Court in Division is incomplete in itself. The Court in Division failed to grant the proper relief based on the evidence on hand and which the circumstances demand – the determination of who is ultimately answerable to respondent Tacloban City Government for the tax liability subject of the instant case. There must be complete relief in finding respondents Province of Leyte, PMO and PTA, as the representatives of the Republic, liable to respondent Tacloban City Government for unpaid real property taxes.

The Court *en banc* shall resolve two focal points based on the grounds interposed by petitioner, namely: tax treatment of LPHI's real properties, and the entity liable to real property tax.

Section 234 of the 1991 Local Government Code, or also known as Republic Act ("R.A.") No. 7160 enumerates the following real properties exempt from real property tax:

> Section 234. Exemptions from Real Property Tax. The following are exempted from payment of real property tax:
>
> (a) **Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise to a taxable person**;
>
> (b) Charitable institutions, churches, parsonages, or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under RA 6938; and

(e) Machinery and equipment used for pollution control and environmental protection. (Emphasis supplied.)

The law provides that when the beneficial use of a real property owned by the Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax.

Here, respondents Province of Leyte, PMO and PTA all admit they are co-owners[24] of the hotel; while petitioner, a domestic private corporation, is the lessee of the hotel pursuant to the Contract of Lease dated September 15, 1994.[25]

Petitioner has acknowledged in its Petition for Review the existence and nature of the contract of lease dated September 15, 1994 as follows:

> Subsequently, or on 15 September 1994, the parties executed a Contract of Lease covering the property known as the Leyte Park Hotel located at Magsaysay Boulevard, Tacloban City, situated on 61,322 square meters of land covered by TCT No. T-1883 of the Registry of Deeds of Tacloban City, together with all the buildings, machinery, equipment and other improvement found thereon.
>
> xxx xxx xxx
>
> Respondents moreover, warranted the peaceful possession, operation and enjoyment of the leased

[24] Docket, CTA OC No. 012, Joint Stipulation of Facts and Issues, p.701
[25] *Id.*

> premises by the petitioner. **Thereafter, petitioner took physical possession of the leased premises, introduced substantial improvements thereon at the cost of several millions of pesos and commenced operation as a private resort hotel.**[26] (Emphasis supplied.)

Evidently, through the lease contract, the beneficial use of the hotel real properties is granted to petitioner, a domestic corporation which is taxable. Hence, these assets are likewise taxable. Logically, petitioner, the beneficial user of the real properties, is liable to real property tax under Section 234 (a) of R.A. 7160.

A taxable person who has actual and beneficial use and possession of the real property is directly liable for real property tax as explained in the case of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[27] in this manner:

> The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, **such as the tax on property owned by the government but leased to private persons or entities**, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.** (Emphasis supplied.)

In the case of *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*[28], notwithstanding the Supreme Court's declaration that GSIS as exempt from real property tax under its Charter and as an instrumentality of the national government, the Katigbak property leased to Manila Hotel

[26] Rollo, pp. 9, 10 & 11.
[27] G.R. No. 171586, July 15, 2009, 593 SCRA 47.
[28] G.R. No. 186242, December 23, 2009, 609 SCRA 330.

Corporation ("MHC"), is subject to real property tax, and MHC being the taxable beneficial user of the real property is liable for the tax as follows:

> In sum, the Court finds that GSIS enjoys under its charter full tax exemption. Moreover, as an instrumentality of the national government, it is itself not liable to pay real estate taxes assessed by the City of Manila against its Katigbak and Concepcion-Arroceros properties. **Following the "beneficial use" rule, however, accrued real property taxes are due from the Katigbak property, leased as it is to a taxable entity. But the corresponding liability for the payment thereof devolves on the taxable beneficial user.** The Katigbak property cannot in any event be subject of a public auction sale, notwithstanding its realty tax delinquency. **This means that the City of Manila has to satisfy its tax claim by serving the accrued realty tax assessment on MHC, as the taxable beneficial user of the Katigbak property** and, in case of nonpayment, through means other than the sale at public auction of the leased property. (Emphasis supplied.)

In another case of *Republic of the Philippines (represented by the Department of Energy[DOE] and the Philippine National Oil Company Energy Development Corporation –[PNOC-EDC] v. City of Kidapawan et al.*[29], the City Treasurer of Kidapawan assessed PNOC-EDC for its geothermal operations of a 104-megawatt power plant within the Mt. Apo Geothermal Reservation Area ("MAGRA"). PNOC-EDC is a government owned and controlled corporation with no tax exemption under its charter. Finding PNOC-EDC as beneficial user of the real property, the Supreme Court held that:

> Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax. **At this point, it is well to note that in real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had**

[29] G.R. No. 166651, December 9, 2005, 477 SCRA 324.

> **actual or beneficial use and possession of it regardless of whether or not he is the owner.**
>
> **Under the service contract entered into by the government and PNOC-EDC, the latter is both the beneficial and actual user of the MAGRA.**
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> xxx xxx xxx
>
> **It is clear from the above-cited provisions that the PNOC-EDC is the beneficial user of the MAGRA and is thus liable to pay the real property tax assessments.** PNOC-EDC exclusively conducts geothermal operations in the area for commercial utilization. It retains a profit in the amount of 40% of the net value of the amount realized from the sale of geothermal resources. It is even allowed to charge its operating expenses from the gross value of the sales.

It is established that the taxable entity having beneficial use of the real property is liable for real property tax pursuant to Section 234(a). During the years 1995 until 2004, petitioner as lessee exercised the beneficial use of LPHI's real properties, and it should accordingly be answerable to pay the tax.

Moreover, both APT and PTA are tax exempt pursuant to Section 34 of Proclamation No. 50[30] and Section 2 of Presidential Decree No. 1175[31] as follows:

> "SECTION 34. Exemption from Taxes, Fees and Other Charges. – The provisions of any law to the contrary notwithstanding, **the Trust as well as the corporations and assets held by it, shall be exempt from all taxes, fees, charges, imposts, and assessments arising from or occasioned by the passing of title over such corporations or assets from the government** institutions to the Trust and/or from the Trust to a private acquisitor or buyer imposed by the National Government or any subdivision thereof

[30] PROCLAIMING AND LAUNCHING A PROGRAM FOR THE EXPEDITIOUS DISPOSITION AND PRIVATIZATION OF CERTAIN GOVERNMENT CORPORATIONS AND/OR THE ASSETS THEREOF, AND CREATING THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST.

[31] AMENDING CERTAIN SECTIONS OF PRESIDENTIAL DECREE NO. 189, AS AMENDED BY PRESIDENTIAL DECREE NO. 564 OTHERWISE KNOWN AS THE CHARTER OF THE PHILIPPINE TOURISM AUTHORITY.

including but not limited to stock transfer taxes, capital gains taxes, documentary stamps, registration fees and the like: Provided, that in case the said government institutions acquired the said assets by foreclosure, the non-payment of similar taxes, fees, charges, imposts, and assessments shall not be a bar to the consolidation of title in the foreclosing institutions and the subsequent passing of title to the Trust or the corporations held by the Trust.

The sale or transfer of such corporations or assets shall not be enjoined or hindered by the existence of any liens by way of taxes, charges or other assessments in favor of the government at the time of sale or transfer: Provided, that the proceeds from such sale or transfer shall be subject to a tax lien and first be applied to satisfy such obligations secured by said liens."

xxx xxx xxx

"SECTION 2. Section 36 is hereby amended by adding a new paragraph to read as follows:

"The above properties including those acquired by the Authority by pursuance, transfer or assignment shall be exempt from the payment of all taxes of whatever kind and nature imposed by the Republic of the Philippines, its agencies, instrumentalities or political subdivisions." (Emphasis supplied.)

We find relevant the ruling of the RTC of Tacloban Branch 9, the pertinent excerpts of which read:

Clear from the aforequoted provision of law **that the exemption from real estate taxes of real property owned by the Republic of the Philippines or any of its political subdivisions ceases from the moment the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person, as in this case to Unimaster Conglomeration, Inc.** It is admitted by the herein parties that the Leyte Park Hotel, Inc. was leased by its owners including herein Petitioner) to Unimaster Conglomeration Inc. starting on September 15, 1994 for a period of twelve (12) years. **Hence, from then on the beneficial use thereof has been granted to the lessee, Unimaster Conglomeration, Inc. The beneficial use of the Leyte Park Hotel having been granted for a consideration to Unimaster, a taxable entity, applying the aforestated provision of law it follows that its exemption from real estate taxation ceases. When the City of Tacloban imposes realty taxes on the Leyte Park Hotel, the said imposition is valid or legal, the Leyte Park Hotel having ceased to be exempted from realty tax from the moment its beneficial use was granted to Unimaster Conglomeration Inc., a taxable entity.**

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From the aforementioned findings of this Court, it can now be safely concluded that considering that the herein petitioner is not the proper entity who should pay the realty tax imposed by the respondent on the Leyte Park Hotel, Inc., but the latter's beneficial owner, Unimaster Conglomeration, Inc. the present petition filed by the herein petitioner against the respondents to enjoin/prohibit the latter to effect the warrant of levy they issued to petitioner so as to collect the realty tax of the Leyte Park Hotel Inc. is proper.[32] (Emphasis supplied.)

RESPONDENT TACLOBAN CITY GOVERNMENT CANNOT COLLECT PAYMENT OF REAL PROPERTY TAXES FROM RESPONDENTS PROVINCE OF LEYTE, PMO AND PTA ON THE BASIS THAT IT IS NOT PRIVY TO THE CONTRACT OF LEASE. qr

[32] Exhibit "I"

THE CTA HAS NO JURISDICTION TO RULE ON THE VALIDITY OF THE CONTRACT OF LEASE.

Petitioner asserts that under the contract of lease respondents PMO, PTA and Province of Tacloban obligated themselves liable to pay real property tax on LPHI's real properties.

We disagree.

In the contract of lease dated September 15, 1994, the parties agreed that any payment of real property taxes by the lessee shall be credited against any amount due from the lessee to the lessor.[33]

Simply stated, the contract of lease provides that whatever real property tax payments undertaken by lessee shall be reimbursed by the lessors.

As earlier mentioned, considering that the beneficial use of LPHI's real properties is vested with petitioner for years 1995 to 2004, the latter is undoubtedly liable for real property tax due of P22,826,902.20.

Here, the existence of the lease agreement placing the burden on the payment of real property tax to petitioner as lessee and beneficial user of the real properties pursuant to law shows why the case of *City of Pasig, represented by the City Treasurer and the City Assessor v. Republic of the Philippines, represented by the Presidential Commission on Good Government*[34] relied by petitioner is inapplicable to the instant case.

In the *City of Pasig* case, Jose Y. Campos, a confessed crony of former President Ferdinand E. Marcos, surrendered Mid-Pasig Land Development Corporation ("MPLDC"), the owner of two parcels of land, to the Republic of the Philippines. MPLDC earlier leased portions of its properties to different business establishments. The Supreme Court directed Pasig City to issue the Republic new real property tax assessments covering only the portion of the properties actually leased to taxable entities **on the assumption "that the**

[33] Exhibit "G".
[34] G.R. No. 185023, August 24, 2011, 656 SCRA 271.

Republic passes on the real estate tax as part of the rent to the lessees."[35] This statement bolsters the ground that the taxable beneficial user, a private establishment operating as lessee, is directly liable for real property tax. Contrary to petitioner's position, the beneficial use principle was not repudiated by the Supreme Court in that case.

Petitioner counters that the Court in Division's Decision dated November 15, 2011 is incomplete as it failed to mention the liability of respondents Province of Leyte, PMO and PTA to real property tax. In effect, petitioner is requesting this Court to order respondent Tacloban City Government to collect the entire real property taxes due of P22,826,902.20 from respondents Province of Leyte, PMO and PTA.

Petitioner's stance deserves scant consideration.

The CTA as a tax court, is devoid of authority to order respondent Tacloban City Government to enforce the alleged contractual obligation of respondents Province of Leyte, PTA and PMO on the real property taxes due for taxable years 1995 to 2004.

In the case of *National Power Corporation v. Province of Quezon*[36], the Supreme Court ruled that a local government unit not privy to a contract can only enforce the law, and not the agreement of the parties. The Supreme Court echoed the following pronouncements:

> xxx **The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract as discussed below.**

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[35] *City of Pasig, represented by the City Treasurer and the City Assessor v. Republic of the Philippines, represented by the Presidential Commission on Good Government, Supra.*

[36] G.R. No. 171586, July 15, 2009, 593 SCRA 47. See *FELS Energy, Inc. v. The Province of Batangas and the Office of the Provincial Assessor of Batangas* and *National Power Corporation v. Local Board of Assessment Appeals of Batangas, Lauro C. Andaya, in his capacity as the Assessor of the Province of Batangas, and the Province of Batangas represented by its Provincial Assessor*, G.R. Nos. 168557 and 170628, February 16, 2007, 516 SCRA 186.

> xxx only Mirant as the contractual obligor, not the local government unit, can enforce the tax liability that NPC contractually assumed; the NPC does not have the "legal interest" that the law and jurisprudence require to give it personality to protest the tax imposed by law on Mirant."
>
> By our above conclusion, we do not thereby pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC under took. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between parties, their assigns and heirs. **Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations**. The tax due will not come from one pocket and go to another pocket of the same governmental entity. **An LGU is independent and autonomous in its taxing powers and this is clearly reflected in Section 130 of the LGC.** (Emphasis supplied.)

Clearly, this Court can only determine the extent of petitioner's real property tax liability to respondent Tacloban City Government in relation to the beneficial use clause under Section 234 (a) of R.A. 7160. The contractual obligations of the parties under the lease agreement concern petitioner and the lessors only. Respondent Tacloban City Government is not privy to the lease contract.

In the Resolution dated April 17, 2012, the Court in Division correctly observed that:

> It has come to the notice of the Court that there is a proper case pending before the Regional Trial Court of Makati, which is the proper forum to determine the validity and enforceability of the Contract of Lease.[37]

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[37] Rollo,pp. 95 & 198.

Hence, RTC Makati, and not this Court shall resolve the validity of the contract of lease including the contractual stipulation of the parties.

To recapitulate, the Court *en banc* finds no cogent reason to reverse the findings of the Court in Division in ordering petitioner to pay real property taxes of P22,826,902.20 for the years 1995 to 2004, in favor of respondent Tacloban City Government.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *en banc* before the case was assigned to the writer for the opinion of the Court *en banc*.

ROMAN G. DEL ROSARIO
Presiding Justice