REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS DEVELOPMENT BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6574

COMMISSIONER OF INTERNAL REVENUE represented by **Danilo A. Duncano** – Regional Director and **Clavelina S. Nacar**, Revenue District Officer, Revenue Region No. 7, Revenue District Office No. 40,
Respondents.

Promulgated:

NOV 18 2003

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D E C I S I O N

This is an action to protest the denial of the "Letter of Reconsideration/Reinvestigation" dated May 6, 2002 filed by the petitioner pursuant to Section 228 of the Tax Code questioning the legal basis of the various Assessment Notices bearing the No. 40316 dated April 12, 2002.

The material antecedents are undisputed:

Petitioner is a banking corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at the Plantersbank Building, 314 Sen. Gil Puyat Avenue, Makati City.

On October 23, 1997, spouses Antonio Pascua and Cynthia Pascua *(Sps. Pascua, for brevity)* obtained a loan from petitioner for the amount of P2,000,000.00. As security for the loan, Sps. Pascua executed a real estate mortgage contract over a parcel of land including all improvements thereon and covered by Transfer Certificate of Title No. N-176351 (Exh. "A") in favor of petitioner.

For failure of the spouses to pay the loan, petitioner foreclosed the real estate mortgage over the property on November 8, 1999. Being the highest bidder, the corresponding Certificate of Sale (Exh. "B") was issued in favor of the petitioner.

On November 24, 1999, the Certificate of Sale was duly registered in the Office of the Register of Deeds of Quezon City under Entry No. 882. (p. 4 of Exh. "A"; p. 19, CTA Docket) Before the expiration of the redemption period on November 24, 2000, Sps. Pascua requested for an extension of the redemption period over the foreclosed property until March 31, 2001 which was granted by petitioner in a letter dated November 22, 2000.

On February 28, 2001, Sps. Pascua redeemed the property for the amount of P3,400,000.00. The corresponding certificate of redemption (pp. 81-82, BIR Records) was issued by the petitioner.

On May 4, 2001, Sps. Pascua sold the redeemed property to Spouses Jessie and Bethel Garcia.

Subsequently, on May 24, 2001, Sps. Pascua paid the capital gains and documentary stamp taxes on the sale of the property in favor of Spouses Jessie and Bethel Garcia based on the zonal valuation.

Upon review of the records by the Revenue District Officer, Clavelina S. Nacar, a Post Reporting Notice dated October 17, 2001 (Exh. "D") was sent to the petitioner for deficiency assessment on capital gains and documentary stamp taxes in the total amount of P753,538.66.

On November 20, 2001 (Exh. "E"), petitioner submitted a reply letter dated November 19, 2001 contesting the Post Reporting Notice and explaining its legal position on the assessment.

On April 26, 2002, petitioner received a copy of the Preliminary Assessment Notice dated March 22, 2002 (Exh. "F") from Mr. Danilo A. Duncano, Regional Director of the Bureau of Internal Revenue giving petitioner fifteen (15) days to present its side in writing on the said assessment.

On May 6, 2002, petitioner sent a reply letter dated May 3, 2002 addressed to Mr. Danilo A. Duncano in compliance to the latter's letter. The following day, on May 7, 2002, petitioner sent another letter dated May 6, 2002 (Exh. "G") addressed to Mr. Danilo A. Duncano requesting for reconsideration of the assessments and to conduct a reinvestigation based on the legal issues raised in petitioner's letter dated November 19, 2001.

Details of the subject Assessment Notices are shown below:

Assessment Notice
Demand No. 40316
Capital Gains

Tax Due	P150,421.32
Add: Surcharge (25%)	37,605.33
Interest (20% from 12-24-99 to 5-13-02)	71,617.26

Total Amount Payable	P259,643.91
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Assessment Notice
Demand No. 40316
Documentary Stamp Tax

Tax Due	P37,620.00
Add: Surcharge (25%)	9,405.00
Interest (20% from 12-13-99 to 5-13-02)	19,437.00

Total Amount Payable	P66,462.00
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Assessment Notice
Demand No. 40316
Creditable Withholding Tax

Tax Due	P255,000.00
Add: Surcharge (25%)	63,750.00
Interest (20% from 3-30-01 to 5-13-02)	57,091.66

Total Amount Payable	P375,841.66
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Assessment Notice
Demand No. 40316
Documentary Stamp Tax

Tax Due	P51,000.00
Add: Surcharge (25%)	12,750.00
Interest (20% from 3-12-01 to 5-13-02)	11,928.33

Total Amount Payable	P75,678.33
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Assessment Notice
Demand No. 40316
Compromise Penalty

Tax Due	
Add: Surcharge (25%)	
Interest	
Compromise Penalty	P52,500.00

Total Amount Payable	P52,500.00
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FORMAL LETTER OF DEMAND
Demand No. 40316
Date Issued: April 12, 2002
Due Date: May 13, 2002

A. **CAPITAL GAINS TAX DEFICIENCY** on extra-judicial foreclosure sale (date of foreclosure: November 23, 1999) due to non-redemption within the one-year period of redemption.

Bid Price	<u>P2,507,022.15</u>
Capital Gains Tax due thereon (6%)	P 150,421.32
Add: 25% surcharge	37,605.33
20% interest p.a. from 12-24-99 to 5-13-02	71,617.26*

TOTAL AMOUNT DUE	P 259,643.91*
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DOCUMENTARY STAMP TAX DEFICIENCY

Basic DST due P2,508,000.00 x P15.00 / 1,000	P37,620.00
Add: 25% surcharge	9,405.00
20% interest p.a. from 12-13-99 to 5-13-02	19,437.00*
TOTAL AMOUNT DUE	P66,462.00*

B. **CREDITABLE WITHOLDING TAX DEFICIENCY** on subsequent transfer of ownership (date of transfer: February 28, 2001)

Selling Price	P3,400,000.00
Creditable Withholding Tax due thereon (7.5%)	P 255,000.00
Add: 25% surcharge	63,750.00
20% interest p.a. from 3-30-01 to 5-13-02	57,091.66*
TOTAL AMOUNT DUE	P 375,841.66*

DOCUMENTARY STAMP TAX DEFICIENCY

Basic DST due P3,400,000.00 x P15.00 / 1,000	P 51,000.00
Add: 25% surcharge	12,750.00
20% interest p.a. from 3-12-01 to 5-13-02	11,928.33*
TOTAL AMOUNT DUE	P 75,678.33*

*Please note that the interest and total amount due will have to be adjusted if paid beyond May 13, 2002.

On November 14, 2002, petitioner received a copy of the letter dated November 8, 2002 from Revenue District Officer, Ms. Clavelina S. Nacar denying petitioner's motion for reconsideration and reinvestigation dated May 6, 2002 (Exh. "H").

Hence, petitioner filed the instant petition for review on December 12, 2002.

In his Answer filed through registered mail on February 4, 2003, respondent raised the following Affirmative and Special Defenses:

> "6. The grant of an extension of time to redeem a foreclosed property is purely a unilateral act of the mortgagee which affects only itself; the same does not bind the government, specifically the BIR, on the specific requirements of due date of payment of taxes connected with such transaction;

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7. The due dates of filing and payment of internal revenue taxes are those that are specified and mandated by the National Internal Revenue Code, other tax rulings and issuances of the Bureau of Internal Revenue; the same is not subject to change or extension, except by proper amendments to the law or by express extension of time by the Commissioner;

8. It is stated under Section 4 of the National Internal Revenue Code, as amended:

> "Sec. 4 – Power of the Commissioner to Interpret and Decide Tax Cases – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

Likewise, the power to extend the period for the filing and payment of internal revenue taxes is vested by law upon the Commissioner of Internal Revenue;

9. Under Revenue Regulations No. 4-99 dated March 9, 1999, relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by bank, finance and insurance companies, states as follows:

> Sec. 3. Capital Gains Tax –
>
> (1) x x x x x
>
> (2) In case of non-redemption, the capital gains tax on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period"

10. The assessment for deficiency taxes are valid and in accordance with law;

11. Assessments are prima facie presumed correct and made in good faith; the above assessment was determined from the deficiencies computed from the records of the petitioner;

12. The burden of proof is upon the petitioner to prove that the assessment issued by the respondent is indeed null and void."

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During the hearing of this case on May 12, 2003, the parties manifested that they are submitting the case for decision based on the pleadings as the same involves purely legal issues.

The following issues have been jointly stipulated by the parties:

1. Whether or not there was an automatic transfer of title and ownership over the foreclosed property in favor of the petitioner-mortgagee upon the expiration of the one (1) year redemption period provided for under Act No. 3135 as amended by Act No. 4118.
2. Whether or not the petitioner/mortgagee bank and the borrower/mortgagor can extend the period of redemption by agreement of the parties.
3. Whether or not the act of the petitioner in extending the redemption period upon the request of the borrower/mortgagor has also extended the period within which to pay the taxes due on the said foreclosed property.
4. Whether or not the assessment is valid and demandable considering that the transaction occurred at the end of the one-year redemption period and the subsequent sale of the property.

Before we discuss the issues raised by the parties, we shall determine whether or not petitioner has timely filed the instant petition.

Section 228 of the Tax Code provides, viz:

> **Section 228.** ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x.

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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

On April 12, 2002, respondent issued the subject assessment notices, all bearing the no. 40316, for petitioner's deficiency capital gains, documentary stamp and creditable withholding taxes, as well as compromise penalty.

Within thirty days from receipt of said assessment notice or on May 7, 2002, petitioner registered its protest through a letter dated May 6, 2002 assailing the aforementioned assessment notices and requesting for reinvestigation. On November 8, 2002, the BIR denied petitioner's request for reconsideration/reinvestigation. The denial was received by petitioner on November 14, 2002. Petitioner then filed this petition ~~for~~ on December 12, 2002. Evidently, the instant petition for review was filed on time.

We shall now proceed to discuss the issues raised by the parties.

Petitioner submits that under existing laws and jurisprudence, there is no automatic transfer of rights, title and ownership over the foreclosed property after the expiration of the one (1) year redemption period. According to petitioner, it is the operative act of executing the deed of absolute sale or affidavit of consolidation that conveys or transfers the title and ownership over the foreclosed property in favor of the petitioner. Since petitioner granted the request of the Sps. Pascua to extend the period of redemption, such statutory right and privilege to redeem existed as of the time of redemption on February 28, 2001.

Respondent believes otherwise, claiming that the grant of an extension of time to redeem a foreclosed property is purely a unilateral act of the mortgagee which affects only itself, the same does not bind the government, specifically the BIR, on the specific requirements of due payment of taxes connected with such transaction.

We find for the petitioner.

Section 6 of Act No. 3135, as amended, in relation to Section 33, Rule 39 of the 1997 Rules of Civil Procedure, grants the debtor/mortgagor the opportunity to re-acquire ownership of his foreclosed property within one-year reckoned from the date of registration of the Certificate of Sale, thus:

> "Section 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; xxx"

"RULE 39

> Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor."

Thus, it is clear from the foregoing that the transfer of ownership ensues if no redemption was made within the redemption period of one year. "Upon the expiration of the right of redemption (not upon "execution and delivery of sale" as provided for in the former Rule) the purchaser or redemptioner ("or assignee" was deleted) shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor." *(p. 416, Remedial Law, Vol. II, 2000 Edition, Herrera)*

However, in the case at bar, prior to the expiration of the one year redemption period, Sps. Pascua requested for an extension of time within which to redeem the foreclosed property which was granted by petitioner. Hence, a new redemption period was agreed upon by the parties, which extended the right to redeem the foreclosed property until March 31, 2001. Thus, there was no automatic transfer of title and ownership over the foreclosed property in favor of the petitioner-mortgagee upon expiration of the one (1) year period.

In the case of ***Lazo vs. Republic Surety & Insurance Co., Inc. No. L-27365, January 30, 1970),*** the Highest Tribunal passed upon the issue in this wise:

> "As a rule, the one-year period of legal redemption begins to run from the date of recording of the sheriff's certificate of sale. But where by voluntary agreement of the parties, consisting of extensions of the

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> redemption period granted at the request of the plaintiffs, followed by a commitment by plaintiffs to pay the redemption price at a fixed date, the concept of legal redemption is converted by the parties into one of conventional redemption such that it generated binding contracts when approved by the defendant. In such a case, the period of redemption is that agreed upon by the parties.
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> It is clear, in the light of the facts and circumstances above set forth, that the parties had abandoned entirely the concept of legal redemption in this case and converted it into one of conventional redemption, in which the only governing factor was the agreement between them.
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> The plaintiffs' repeated requests for time within which to redeem, each with a definite date of expiration, generated binding contracts when approved by the defendant company. A contract, needless to say, has the force of law between the parties."

And in the case of ***Ramirez vs. Court of Appeals, 219 SCRA 598***, the Supreme Court ruled:

> "By accepting the redemption price after the statutory period for redemption had expired, PNB is considered to have waived the one (1) year period within which Ramirez could redeem the property. There is nothing in the law which prevents such a waiver. Allowing a redemption after the lapse of the statutory period, when the buyer at the foreclosure does not object but even consents to the redemption, will uphold the policy of the law x x x which is to aid rather than defeat the right of redemption. Thus, there is no doubt that the redemption made by petitioner Ramirez is valid."

Moreover, redemption laws, being remedial in nature, are to be construed liberally to carry out their purpose, which is to enable the debtor to have his property applied to pay as many debtor's liabilities as possible. ***(Enage vs. Escano, 38 Phil 657 (1918); Javellana vs. Nuñez, 40 Phil 761 (1920); cited in Statutory Construction, Third Edition, 1995, Agpalo)***

As to whether or not the act of the petitioner in extending the redemption period upon the request of the borrower/mortgagor has also extended the period within which to pay the taxes due on the said foreclosed property, the court rules in the affirmative.

Petitioner argues that capital gains tax on foreclosed property shall only be imposed if the mortgagor fails to redeem the foreclosed property within the one (1) year redemption period. However, this one (1) year redemption period can be extended by agreement of the parties. Considering that the owner/mortgagor redeemed the foreclosed property within the extended redemption period agreed upon, the petitioner was not able to consolidate its title over the foreclosed property, hence, no capital gains is required to be paid and that no gains realized in the said redemption made by the owner/mortgagor.

Respondent maintains that whether there has been actual transfer of ownership of the foreclosed property by the end of the redemption period is not a reckoning event for the imposition of the capital gains tax and documentary stamp tax, since it is based on capital gains presumed to have been realized. According to respondent, while no capital gains tax shall be imposed in case of redemption of foreclosed properties within the redemption period because no capital gains has been derived by the mortgagor and no sale or transfer of real property has been realized, however, in case of non-redemption, the capital gains tax on foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only after the expiration of the one-year redemption period. (Sec. 3, Revenue Regulations No. 4-99) Furthermore, in case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is located in the Philippines. The tax return prescribed under the Code shall be filed within ten (10) days after the close of the month following the lapse of the one-year redemption period, and the tax due under Sec. 196 of the Tax Code of 1997 shall be paid based on the bid price at the same time the aforesaid return is filed. (Sec. 4(2), Revenue Regulations No. 4-99)

We agree with the petitioner.

Section 24(D)(1) of the 1997 Tax Code provides, viz:

> "(D) *Capital Gains from Sale of Real Property*.-
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> (1) *In General*. – The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: *Provided*, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer." (Underlining ours)

From the foregoing, capital gains tax is imposed on the capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro sales* and other forms of conditional sales by individuals, including estates and trusts. This presupposes that a disposition of real property in the manner enumerated in Section 24(D)(1) must have taken place before the capital gains tax may be imposed on the capital gains presumed to have been realized from such disposition.

RMO No. 29-86 dated September 3, 1986 provides that:

> "No certification authorizing the transfer of title to real property classified as capital assets sold by an individual thru a mortgage foreclosure sale shall be issued without the pre-payment of capital gains tax and the corresponding documentary stamp tax. Accordingly, for real property foreclosed by the bank on or after September 3, 1986, capital gains tax and corresponding documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank. (BIR Ruling No. 134, July 12, 1990)"

From the foregoing, the capital gains tax is imposed upon failure to redeem the foreclosed property and the purchaser shall then consolidate the title in its favor. Considering that the owner/mortgagor, Sps. Pascua, redeemed the foreclosed property within the extended period agreed upon, the petitioner was not able to consolidate its title over the foreclosed property, hence, no capital gains was realized in the said transaction such that no capital gains tax is required to be paid. In the same vein, the imposition of the documentary stamp tax under Section 196 of the Tax Code was not proper as this presupposes the fact that there was conveyance of real property from the Sps. Pascua to the petitioner.

Corollary thereto, respondent averred in his Answer that the due dates of filing and payment of internal revenue taxes are those that are specified and mandated by the National Internal Revenue Code, other tax rulings and issuances of the Bureau of Internal Revenue and the same are not subject to change or extension, except by proper amendments to the law or by express extension of time by the Commissioner.

We do not subscribe to respondent's assertions.

The due dates of filing and payment of taxes are imposable only when there arises a taxable event in which the particular tax should be imposed. In the instant case, since the ownership over the foreclosed property was not consolidated in the name of the petitioner, the taxable event that would give rise to the imposition of the

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capital gains tax and the documentary stamp tax did not arise. Since the Sps. Pascua were able to redeem the foreclosed property within the redemption period agreed upon, there is no taxable event which would justify the imposition of the capital gains tax and documentary stamp tax.

It bears stressing that what is being subjected to the capital gains tax is not the transfer of ownership *per se* but the profit or gain that was presumed to have been realized by the seller/mortgagor arising from the transfer. The concept of income implies gain, profit or flow of wealth (Madrigal vs. Rafferty, 38 Phil 414). Hence, it is necessary that the debtor/mortgagor should have profited, materially or otherwise, from the foreclosure sale where the properties were redeemed within the specified period under Act No. 3135, as amended. Since the debtor-mortgagor did not earn any income from the sale of the foreclosed property, then it follows that it is not liable to pay the CGT.

In the case of ***Spouses Arturo Soriano and Virginia T. Soriano vs. Hon. Liwayway Vinzons-Chato as Commissioner of Internal Revenue, CTA Case No. 5563, promulgated on June 22, 1999, with Entry of Judgment dated August 13, 1999,*** this court ruled that since no capital gains have been derived by the debtors-mortgagors in the foreclosure sale, the imposition of the corresponding capital gains tax is not warranted, thus:

> "It bears stressing that it is not the transfer of ownership per se that subjects the sale to the 5% capital gains tax but the profit or gain that was presumed to have been realized by the seller/mortgagor by means of said transfer as can be clearly seen from the provisions of Section 21 (e) of the Tax Code (supra). Let us not forget that the capital gains tax is an income tax defined as a tax on a person's income, wages, salary commissions, emoluments, profits and the like (Black's Law Dictionary , 6th Edition). The concept of income implies gain, profit or flow or wealth (Madrigal vs. Rafferty, 38 Phil 414). The question

> that should be asked at this point is: Did the petitioners profit or gain anything from the foreclosure sale where the properties were redeemed within the specified redemption period? The answer is obvious. Petitioner did not earn any income from the sale of these foreclosed properties, hence they should not be made liable to pay the capital gains tax. Even the Respondent, in BIR Ruling No. 006-92, acknowledged the inequity of collecting the capital gains tax before the expiration of the redemption period and provided for the solution of refunding the same in case the right of redemption is exercised, to wit:
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> > "In foreclosure sales of mortgaged properties, the creditor-bank is the statutory seller, representing the owner-mortgagor of the property, so that said bank becomes liable for the capital gains tax due on such foreclosure sale based on the bid price in the auction sale. However, said bank could get reimbursement or recovery of the capital gains tax payment, if the right of redemption is exercised by the debtor-mortgagor or when the property is sold to any party whatsoever.
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> xxx xxx
>
> As said RR 4-99 states, no capital gains having been derived by the mortgagor (Petitioners, in the instant case), then no capital gains tax shall be imposed. It will be unjust to deprive the Petitioners their right to refund the capital gains tax which they already paid on the foreclosure sale of their properties when the facts show that they redeemed these properties within the period specified by the law."

The imposition of the creditable withholding tax on the alleged subsequent transfer of ownership on February 28, 2001, and the corresponding documentary stamp tax, was not proper. It is clear from the records of the case that Sps Pascua redeemed the foreclosed property within the extended period of redemption, that is, on February 28, 2001. Hence, the transaction was a redemption of the foreclosed property by the mortgagors and not a sale of real property by the petitioner bank, as evidenced by a Deed of Redemption duly executed by the petitioner in favor of Sps. Pascua.

In fine, the imposition of the capital gains tax and the documentary stamp tax on the extrajudicial foreclosure sale on November 23, 1999 and the imposition of the

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creditable withholding tax and documentary stamp tax on the alleged subsequent transfer of ownership on February 28, 2001 were not warranted.

WHEREFORE, the instant Petition for Review is **GRANTED.** Accordingly, Assessment Notices bearing the No. 40316 for deficiency capital gains tax, creditable withholding tax, documentary stamp taxes and compromise penalty are hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

C E R T I F I C A T I O N

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

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