Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner,	**CTA Case No. 8966** For: Refund
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 03 2017 1:00pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by the Bases Conversion and Development Authority as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves a judicial claim

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[1] Sec. 7. *Jurisdiction.* – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

for refund in the amount of ₱23,913,837.62, corresponding to the alleged excess Creditable Withholding Tax (CWT) paid under protest from January 15, 2013 to December 31, 2013 in connection with the sale or disposition of its allocated units or shares in the Serendra Project located in Fort Bonifacio, Taguig City.[3]

Petitioner Bases Conversion and Development Authority (BCDA) is a government instrumentality vested with corporate powers, duly organized and existing under and by virtue of Republic Act (R.A.) No. 7227 or the Bases Conversion and Development Act of 1992, as amended by R.A. No. 7917. Its office address is located at BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Statement of the Case, Pre-Trial Order, Docket, vol. IV, p. 2496

[4] Par. 2.1, Petition for Review, Docket, vol. I, p. 7

power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2003, petitioner entered into a Joint Development Agreement[5] with Ayala Land, Inc. for the development of Lot B of petitioner's Asset Disposition Program-I. Pursuant to the said agreement, the parties together with the Development Bank of the Philippines executed a Trust Agreement[6] on February 13, 2004. Thereafter, an Escrow Agreement[7] was executed on November 7, 2012.

On several dates, petitioner requested respondent for a confirmatory ruling regarding the former's exemption from all taxes, including CWT and other fees on its shares in the proceeds collected from the Serendra Project.[8]

However, despite the said requests, petitioner paid under protest the amount of ₱23,913,837.62, representing the Creditable Withholding Tax on the sale of its condominium units in the Serendra Project covering the period from January 15, 2013 to December 31, 2013.[9]

On November 18, 2014, petitioner filed its Amended Annual Income Tax Return[10].

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[5] Exhibit "P-1", Docket, vol. IV, pp. 2589 to 2650
[6] Exhibit "P-2", Docket, vol. IV, pp. 2651 to 2668
[7] Exhibit "P-3", Docket, vol. IV, pp. 2675 to 2700
[8] Exhibits "P-4", "P-5", and "P-6", Docket, vol. IV, pp. 2717 to 2718, 2719, and 2720, respectively
[9] Stipulated Facts, JSFI, Docket, vol. IV, p. 2476; Exhibits "P-7" to "P-7J(1)", "P-8" to "P-8K(1)", "P-9" to "P-9J(1)", "P-10" to "P-10C(1)", "P-11" to "P-11I(1)", "P-12" to "P-12H(1)", "P-13" to "P-13F(1)", "P-14" to "P-14G(1)", "P-15" to "P-15J(1)", "P-16" to "P-16D(1)", "P-17" to "P-17F(1)", "P-18" to "P-18B(1)", "P-19" to "P-19I(1)", "P-20" to "P-20E(1)", "P-21" to "P-21N(1)", "P-22" to "P-22H(1)", "P-23" to "P-23R(1)", "P-24" to "P-24D", and "P-25" to "P-25A(1)", Docket, vol. IV, pp. 2721 to 2741, 2742 to 2765, 2766 to 2787, 2788 to 2795, 2796 to 2815, 2816 to 2833, 2834 to 2847, 2848 to 2863, 2864 to 2885, 2886 to 2895, 2896 to 2909, 2910 to 2914, 2915 to 2934, 2935 to 2946, 2947 to 2976, 2977 to 2994, 2995 to 3032, 3033 to 3041, and 3043 to 3046, respectively
[10] Exhibit "P-37", Docket, vol. IV, pp. 3135 to 3142

On December 1, 2014, petitioner filed an administrative claim for refund representing the CWT it paid in the amount of ₱23,913,837.62.[11]

Due to the inaction of respondent on the administrative claim, petitioner filed this Petition for Review[12] before this Court on January 8, 2015.

Respondent raised the following special and affirmative defenses in the Answer[13] filed through registered mail on March 6, 2015 and received by the Court on March 11, 2015:

> "Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> **Petitioner Is Not Exempt from Payment of Taxes**
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> 4. BCDA was created pursuant to Republic Act (R.A.) No. 7227, enacted on March 13, 1992, primarily for the following purposes:
>
> > (1) Convert into alternative productive uses the military reservations in the country and their extensions; and for this purpose, raise funds by the sale of portions of Metro Manila military camps transferred to it by the President.
> >
> > (2) Apply said funds to the development and conversion to productive civilian use of the aforementioned former U.S. bases.
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> In relation, pertinent provisions of R.A. 7227 provide:

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[11] Stipulated Facts, JSFI, Docket, vol. IV, p. 2477; Exhibit "P-26" and "P-26A" to "26H", Docket, vol. IV, pp. 3047 to 3055

[12] Docket, vol. I, pp. 6 to 20

[13] Docket, vol. I, pp. 542 to 548

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> Sec. 8. Funding Scheme. – The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands, covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base, namely:
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> xxx xxx xxx
>
> Provided. That the following areas shall be exempt from sale:
>
> (a) xxx
> (d) xxx
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> xxx xxx xxx
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> The President is hereby authorized to sell the above lands, x x x The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds.
>
> (1) xxx
> (4) xxx

5. Under the foregoing provisions, the President and, subsequently the BCDA, were authorized to 'dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines' and that the proceeds from such disposition were made tax-exempt pursuant to the amendment introduced by R.A. 7917, otherwise known as 'An Act Amending Section 8 of Republic Act Numbered Seventy-Two Hundred and Twenty-Seven, Otherwise Known as the Bases Conversion and Development Act of 1992, Providing For The Distribution of Proceeds From the Sale of Portions

of Metro Manila Military Camps, and For Other Purposes', which reads as follows:

> The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.

6. However, respondent humbly manifests that with the enactment of the NIRC of 1997, as amended, petitioner is now taxable both on sale of land and condominium units, being a governmental entity. Section 27(C) of the NIRC of 1997 is explicit:

> C) Government – owned or Controlled-Corporations, Agencies or Instrumentalities. – **The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government**, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), **shall pay such rate of tax upon their taxable income as are imposed by this Section** upon corporations or associations engaged in a similar business, industry, or activity. (*Emphases supplied*)

7. As can be gleaned, the only government-run entities that are exempt from the payment of income tax are limited to GSIS, SSS, PHIC, PCSO and PAGCOR. Petitioner, not being one of those excluded from the coverage, is therefore, not exempt from the payment of income taxes.

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8. Also, a closer perusal of R.A. 7917 shows that there is no language in Section 8 that expressly or even impliedly exempts the sale of condominium units by BCDA.

9. In **Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, G.R. No. 156040, December 11, 2008**, the High Court had held:

> A tax exemption cannot arise from vague inference. x x x
>
> xxx xxx xxx
>
> Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.

10. In construing statutes granting tax exemptions, it was reiterated in the case of **Smart Communications, Inc. vs. City of Davao, G.R. No. 155491, July 21, 2009**, where it was held that:

> ... tax exemptions are highly disfavored and that a tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even in the instances when it is granted, the exemption must be interpreted in strictissimi juris against the taxpayer and liberally in favor the taxing authority.

Claims for Refund Are Construed Strictly Against the Taxpayer And

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In favor of the Government.

11. Petitioner must prove entitlement to the refund. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

> a. The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
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> b. It must be shown on the return that the income received was declared as part of the gross income; and
>
> c. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

12. Accordingly, the burden of proof of compliance to substantiate its claim for refund or issuance of tax credit certificate is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

13. Equally important is for the petitioner to prove with certainty that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.

14. **Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents.** Hence, tax refunds are in the nature of tax exemptions and are to be interpreted in the strictest manner. Considering that

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tax refunds consist of monetary amounts which are currently in the hands of the government, the validity of petitioner's claim should be and must be meticulously verified.

15. Petitioner must prove every minute aspect of its case.

16. The right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims.

17. All told, respondent respectfully posits that petitioner's claim for refund should be denied."

The case was scheduled for a pre-trial conference on May 28, 2015. During the pre-trial conference, both counsels manifested that they have conferred with each other and that they have read each other's Pre-Trial Briefs. Hence, they have agreed to submit a Joint Stipulation of Facts and Issues.[14]

The parties subsequently filed their Joint Stipulation of Facts and Issue[15] on June 29, 2015. The Court approved the same and terminated the pre-trial on July 8, 2015.[16] The Court likewise issued a Pre-Trial Order[17] on July 24, 2015.

Petitioner presented the following witnesses: Mr. Samuel John DL. Vidallon, Atty. Edilberto R. Rebato, Jr., Mr. Paul M. Azura, Jr., and Ms. Clemencia P. Vicente. Aside from the testimonial evidence that petitioner presented, it formally offered its documentary evidence

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[14] Docket, vol. IV, p. 2464
[15] Docket, vol. IV, pp. 2476 to 2481
[16] Resolution, Docket, vol. IV, p. 2483
[17] Docket, vol. IV, pp. 2496 to 2503

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consisting of Exhibits "P-1" to "P-42(A)(2)", inclusive of submarkings; which the Court admitted except for Exhibits "P-36A" to "P-36M".[18]

Petitioner offered the following documentary exhibits, to wit:

Exhibit:	Description:
P-1	The April 15, 2003 Joint Development Agreement (JDA) between BDCA and Ayala Land, Inc. (ALI)
P-1A and P-1B	Signatures on Page 38
P-2	13 February 2004 Trust Agreement among BCDA, ALI and Development Bank of the Philippines (DBP)
P-2A, P-2B and P-2C	Signatures on Page 17
P-3	7 November 2012 Escrow Agreement among BCDA, ALI, Serendra, Inc., Alveo Land Corp. and DBP
P-3A to P-3E	Signatures on Pages 22 to 23
P-4	BCDA's 3 July 2007 Letter to CIR Lilian B. Hefti
P-4A	Signature of Gen. Narciso L. Abaya, P/CEO of BCDA (p.2)
P-5	BCDA 1 Dec. 2007 Letter to Dep. CIR Gregorio V. Cabantac
P-5A	Signature of Gen. Narciso L. Abaya, P/CEO of BCDA
P-6	BCDA 20 Nov. 2007 Letter to CIR Lilian B. Hefti
P-6A	Signature of Gen. Narciso L. Abaya, P/CEO of BCDA
P-7 to P-7J(1)	11 January 2013 DBP Trust Services Letter to BIR RDO No. 44, Taguig and Pateros re: Payment of CWT under Protest amounting to PhP3,639,851.66, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-8 to P-8K(1)	10 April 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: Payment of CWT under Protest amounting PhP1,751,726.13, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-9 to P-9J(1)	10 May 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: Payment of CWT under protest amounting to PhP1,919,514.28, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-10 to P-10C(1)	10 May 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: BCDA TA#011336 For Serendra Project re: Payment of CWT under protest amounting to PhP4,191.97 as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-11 to P-11I(1)	10 June 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: BCDA TA#011336 For Serendra Project re: payment of CWT under protest amounting to PhP1,364,407.00, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-12 to P-12H(1)	10 June 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: BCDA FAO Serendra TA#012337 For Serendra Project re payment of CWT under protest amounting to PhP2,111,598.22 as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips

[18] Resolutions dated March 1, 2016 and June 8, 2016, Docket, vol. V, pp. 3230 to 3232 and 3247 to 3249, respectively

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P-13 to P-13F(1)	10 July 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: BCDA FAO Serendra TA#011336 For Serendra Project re payment of CWT under protest amounting to PhP689,023.28, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-14 to P-14G(1)	10 July 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig and Pateros re: BCDA FAO Serendra TA#012337 for payment of CWT under protest amounting to PhP1,363,005.81, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-15 to P-15J(1)	8 August 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 For Serendra Project re payment of CWT under protest amounting to PhP3,417,744.36, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-16 to P-16D(1)	8 August 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA FAO Serendra TA#012337 re payment of CWT under protest amounting to PhP510,669.65, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-17 to P-17F(1)	10 September 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 For Serendra Project re payment of CWT under protest amounting to PhP482,911.61, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-18 to P-18B(1)	10 September 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA FAO Serendra TA#012337 re payment of CWT under protest amounting to PhP3,348.22, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-19 to P-19I(1)	9 October 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 For Serendra Project re payment of CWT under protest amounting to PhP1,417,376.54, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-20 to P-20E(1)	9 October 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA FAO Serendra TA#012337 re payment of CWT under protest amounting to PhP125,468.76, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-21 to P-21N(1)	8 November 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 for Serendra Project re payment of CWT under protest amounting to PhP1,440,517.86, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-22 to P-22H(1)	10 November 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA FAO Serendra TA#012337 re: payment of CWT under protest amounting to PhP1,157,879.47, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-23 to P-23R(1)	9 December 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 For Serendra Project re payment of CWT under protest amounting to PhP2,446,973.33, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips

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P-24 to P-24D	8 November 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA FAO Serendra TA#012337 re: payment of CWT under protest amounting to PhP8,879.47, as well as the Withholding Tax Remittance Returns and BTR-BIR Deposit/Payment Slips
P-25 to P-25A(1)	9 December 2013 DBP Trust Services Letter to BIR RDO No. 44-Taguig-Pateros re: BCDA TA#011336 for Serendra Project re: payment of CWT under protest amounting to PhP33,750.00, as well as the Withholding Tax Remittance Returns and BTR/BIR Deposit/Payment Slips
P-26, P-26A to 26H	BCDA 26 November 2014 Letter to CIR Kim S. Jacinto-Henares regarding the additional claim for refund of CWT paid under protest in 2013 re: BCDA's Serendra Project in Fort Bonifacio, as well as the Withholding Tax Remittance Returns and BTR/BIR Deposit/Payment Slips
P-26I	Signature of Arnel Paciano D. Casanova, Esq., P/CEO of BCDA on page 8
P-27, P-27A to P-27C	Schedule of CWTs Paid for 2013
P-28	Copy of Republic Act (RA) 7227
P-29	Copy of Republic Act 7917
P-30	Copy of Executive Order No. 62
P-31	Copy of BIR Ruling [DA-140-00], 8 March 2000
P-32	Copy of BIR Ruling [DA-376-03], 20 October 2003
P-33	Copy of BIR Ruling [415-06], 4 July 2006
P-34	Copy of Administrative Order No. 236
P-35	Copy of Executive Order No. 309
P-36	ALI-Serendra Condo Schedule of Remittance to Bureau of Treasury/FAO AFP
P-37	Annual Income Tax Return of BCDA for Calendar Year 2013
P-38	COA Annual Audit Report on BCDA for the Year Ended December 31, 2013
P-39 to P-39A(2)	Mr. Samuel John DL. Vidallon's 18 May 2015 Judicial Affidavit, consisting of 27 pages, and his signature and the signature of the Notary Public
P-40 to P-40A(2)	Atty. Edilberto R. Rebato, Jr.'s 18 May 2015 Judicial Affidavit, consisting of 11 pages, and his signature and the signature of the Notary Public
P-41 to P-41A(2)	Ms. Clemencia P. Vicente's 18 May 2015 Judicial Affidavit, consisting of 11 pages, and her signature and the signature of the Notary Public
P-42 to P-42A(2)	Mr. Paul M. Azura's 18 May 2015 Judicial Affidavit, consisting of 11 pages, and his signature and the signature of the Notary Public

On the other hand, during the hearing on September 13, 2016, respondent manifested that he would no longer present any witness.[19]

[19] Minutes dated September 13, 2016, Docket, vol. V, pp. 3250 to 3251

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Considering respondent's Memorandum[20] filed on October 27, 2016 and petitioner's Memorandum[21] filed on October 28, 2016, the instant case was declared submitted for decision on November 8, 2016.[22]

The parties stipulated on the following issue for the Court's determination:

> "Whether BCDA is entitled to a refund of the Php23,913,837.62 CWT it paid under protest for 2013."[23]

Pertinent to the resolution of the instant case are Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund."

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[20] Docket, vol. V, pp. 3269 to 3275
[21] Docket, vol. V, pp. 3276 to 3290
[22] Resolution, Docket, vol. V, p. 3293
[23] Issue to be Resolved, JSFI, Docket, vol. IV, p. 2477

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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

It is clear that the afore-quoted Sections 204(C) and 229 of the NIRC of 1997, as amended, govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally.[24] Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

The present claim pertains to creditable income taxes paid under protest by petitioner from January 15, 2013 to December 31, 2013.

Applying the foregoing to the instant case, petitioner had two years from January 15, 2013[25], the earliest payment of its CWT, or until January 15, 2015 within which to file its administrative and judicial claims for refund.

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[24] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro,* G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co., et al.,* G.R. No. L-24221, December 11, 1967

[25] Exhibits "P-7" to "P-7J(1)", Docket, vol. IV, pp. 2721 to 2741

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Since petitioner's administrative and judicial claims for refund were filed on December 1, 2014[26] and on January 8, 2015[27], respectively, the same fell within the two-year prescriptive period.

The Court shall now proceed to discuss the merits of petitioner's claim.

Petitioner contends that R.A. No. 7227, as amended, expressly exempts petitioner from payment of all forms of taxes. Allegedly, a statute granting tax exemption to a government entity is liberally construed.

On the other hand, respondent asserts that petitioner is not exempt from payment of taxes.

Section 8(d) of R.A. No. 7227, as amended by R.A. No. 7917, provides:

> "SECTION 8. *Funding Scheme*. – The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base, namely:
>
> xxx xxx xxx
>
> (d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: *Provided, further*, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.
>
> The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared

[26] Stipulated Facts, JSFI, Docket, Vol. IV, p. 2477; Exhibits "P-26" and "P-26A" to "P-26H", Docket, vol. IV, pp. 3047 to 3055
[27] Docket, volume I, p. 6

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> alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds:
>
> xxx xxx xxx
>
> The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefor, exempt from all forms of taxes and fees."

R.A. No. 7227, as amended by R.A. No. 7917, expressly exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes.

Well-settled is the rule that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. However, when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application. Any interpretation that would give it an expansive construction to

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encompass petitioner's exemption from taxation would be unwarranted.[28]

Applying the foregoing to the instant case, the proceeds of the sale of portions of Metro Manila military camps are exempt from income tax and from CWT.

Further, in a number of cases[29] involving the same parties and issues as the present case, this Court has consistently ruled that even though herein petitioner is still required to pay corporate income tax to the extent of its taxable income, the proceeds, however, from the sale of portions of Metro Manila military camps shall be exempt from income tax and consequently from CWT pursuant to Section 8 of Republic Act No. 7227, as amended by RA No. 7917.

Clearly, in the present case, petitioner is not subject to CWT on the sale or disposition of its condominium units in the Serendra Project.

Nonetheless, while it is undisputed that from January 15, 2013 to December 31, 2013, petitioner paid under protest the total amount of ₱23,913,837.62 representing the CWT on the sale of its condominium units in the Serendra Project,[30] the Court finds petitioner not entitled to a refund of said amount.

In its 2013 Annual Income Tax Return (ITR)[31], petitioner reflected the following:

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[28] *Sea-Land Service, Inc. vs. Court of Appeals, et al.*, G.R. No. 122605, April 30, 2001

[29] *Bases Conversion and Development Authority vs. Commissioner of Internal Revenue*, CTA Case No. 8140, September 13, 2013; *Bases Conversion and Development Authority vs. Commissioner of Internal Revenue*, CTA Case No. 8473, July 3, 2015; *Bases Conversion and Development Authority vs. Commissioner of Internal Revenue*, CTA Case No. 8757, March 15, 2016; *Commissioner of Internal Revenue vs. Bases Conversion and Development Authority*, CTA EB No. 1384 (CTA Case No. 8473), September 21, 2016; *Commissioner of Internal Revenue vs. Bases Conversion and Development Authority*, CTA EB No. 1123 (CTA Case No. 8140), December 16, 2014

[30] Stipulated Facts, JSFI, Docket, vol. IV, p. 2476; Exhibits "P-7" to "P-7J(1)", "P-8" to "P-8K(1)", "P-9" to "P-9J(1)", "P-10" to "P-10C(1)", "P-11" to "P-11I(1)", "P-12" to "P-12H(1)", "P-13" to "P-13F(1)", "P-14" to "P-14G(1)", "P-15" to "P-15J(1)", "P-16" to "P-16D(1)", "P-17" to "P-17F(1)", "P-18" to "P-18B(1)", "P-19" to "P-19I(1)", "P-20" to "P-20E(1)", "P-21" to "P-21N(1)", "P-22" to "P-22H(1)", "P-23" to "P-23R(1)", "P-24" to "P-24D", and "P-25" to "P-25A(1)", Docket, vol. IV, pp. 2721 to 2741, 2742 to 2765, 2766 to 2787, 2788 to 2795, 2796 to 2815, 2816 to 2833, 2834 to 2847, 2848 to 2863, 2864 to 2885, 2886 to 2895, 2896 to 2909, 2910 to 2914, 2915 to 2934, 2935 to 2946, 2947 to 2976, 2977 to 2994, 2995 to 3032, 3033 to 3041, and 3043 to 3046, respectively

[31] Exhibit "P-37", Docket, vol. IV, pp. 3135 to 3142

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Total Income Tax Due	₱ 60,692,061.00
Less: Total Tax Credits/Payments	
Prior Year's Excess Credits Other Than MCIT	288,791,288.00
Creditable Tax Withheld for the 4th Quarter	**59,370,725.00**
Total Tax Credits/Payments	348,162,013.00
Overpayment	**₱(287,469,952.00)**

Even though petitioner's prior year's excess credits amounting to ₱288,791,288.00 were more than sufficient to cover its income tax due of ₱60,692,061.00, petitioner failed to prove that the amount of ₱23,913,837.62 being claimed for refund did not form part of the amount of ₱59,370,725.00 creditable tax withheld for the 4th Quarter of taxable year 2013.

It bears stressing that petitioner indicated in its 2013 Annual ITR its option to carry over the excess tax credits of ₱287,469,952.00 to the succeeding year/quarter. Thus, assuming that the present claim has remained part of the ₱287,469,952.00 excess tax credits as of December 31, 2013, the same shall be carried over and applied to the succeeding years/quarters.

The Court opines that petitioner may benefit twice in case the refund would be granted and would still be able to apply the same to future income tax due, to the prejudice of the government.

Moreover, Section 76 of the NIRC of 1997, as amended, explicitly provides that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed.[32] It is not necessary that said excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as the taxpayer had elected to carry over said amount to the succeeding taxable year that choice is irrevocable for that taxable period. The excess amount shall be carried over to the succeeding taxable years until the same is fully utilized.[33]

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[32] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005

[33] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007

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It must be reiterated that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[34] Consequently, the burden of proving entitlement to a tax refund or issuance of tax credit certificate is on the taxpayer and failure to discharge the burden is fatal to the claim for refund or tax credit.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(see Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

[34] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner,	**CTA Case No. 8966**
	Members:
- versus -	**DEL ROSARIO, *P.J., Chairperson*** **UY, and** **MINDARO-GRULLA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 03 2017 1:00pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by Bases Conversion and Development Authority (BCDA) ***solely*** for the reason discussed hereunder.

Records disclose that BCDA entered into a Joint Development Agreement with Ayala Land, Inc. ("ALI") for the development of Lot B of BCDA's Asset Disposition Program-I.[1] BCDA contributed a parcel of land located in Fort Bonifacio to an unincorporated joint venture, while ALI contributed capital and expertise to undertake and complete the implementation of the Project called the Serendra Project. The parcel of land that BCDA contributed to the Serendra Project shall be conveyed and transferred to the Condominium Corporation, to be established by the unit owners.[2] BCDA then executed a Trust

[1] Petition for Review, CTA Docket, p. 10; CTA Docket, pp. 426-488.
[2] Petition for Review, CTA Docket, p. 10.

Agreement with the Development Bank of the Philippines ("DBP").[3] Under the Trust Agreement, DBP was appointed as BCDA's Trustee, in whose name BCDA's allocated condominium units were registered and which shall hold them in trust for BCDA's benefit. The said condominium units were eventually sold by BCDA to third parties. The creditable withholding taxes (CWT) due on the said sales are the subject of BCDA's Petition for Review. BCDA is of the opinion that similar to the proceeds on its sale of Metro Manila military camps and portions of Fort Bonifacio, the proceeds derived by BCDA from the sale of the condominium units in the Serendra Project are exempt from income tax and consequently, from CWT.

I submit that BCDA's Petition for Review should be denied on the ground that the proceeds from the sale of BCDA's allocated condominium units or shares in the Serendra Project are not exempt from income tax and consequently, from CWT.

In a number of cases, the Court has already settled that when Congress created BCDA in 1992 by virtue of Republic Act (RA) No. 7227 (BCDA Charter, Congress did not deem it proper to exempt BCDA from payment of corporate income tax) just like any other government instrumentality vested with corporate powers. Subsequently, RA No. 7227 was amended by RA No. 7917 **to specifically exempt the proceeds of the sale by BCDA of portions of Metro Manila military camps and portions of Fort Bonifacio from all kinds of taxes and fees**.

While Congress did not make BCDA a tax exempt entity, it clearly and unequivocally declared that the **proceeds** from the sale by BCDA of portions of Metro Manila military camps and portions of Fort Bonifacio are not taxable income as they are exempt from all forms of taxes. Otherwise stated, BCDA is obliged to pay corporate income tax on its taxable income only, albeit proceeds from the sale of portions of Metro Manila military camps and portions of Fort Bonifacio are exempt from income tax and consequently, from CWT.

To emphasize, the tax exemption of BCDA is limited to the proceeds on the sale and transfer of certain Metro Manila Camps, including lands covered by Proclamation No. 423, series of 1957. Section 8 of RA No. 7227 provides:

> "Section 8. Funding Scheme – The capital of the Conversion Authority shall come from **the sales proceeds and/or transfers of**

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[3] CTA Docket, pp. 489-514.

certain Metro Manila Camps, including **all *lands* covered by Proclamation No. 423, Series of 1957, commonly known as Fort Bonifacio** and Villamor (Nichols) Air Base, namely:

xxx xxx xxx

The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds: xxx"

Moreover, RA 7917 No. provides:

"SECTION 1. Paragraph (d), Section 8 of Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992, is hereby amended to read as follows:

(d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: *Provided, further*, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above *lands*, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided,* That no sale or disposition of such ***lands*** will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds: xxx The provisions of law to the contrary notwithstanding, **the proceeds of the sale thereof shall not be diminished and, therefor, exempt from all forms of taxes and fees**." (Emphases supplied)

In *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*,[4] the Supreme Court confirmed that Section 8 of RA No. 7227, as amended by RA No. 7917, clearly exempted the proceeds from the sale of the **Fort Bonifacio land** from all forms of taxes.

[4] G.R. Nos. 164155 & 175543, February 25, 2013.

The issue to be resolved therefore is whether or not BCDA's proceeds from the sale of **its condominium units** in the Serendra Project may be rightfully considered as proceeds from the sale of the Fort Bonifacio land.

It has been settled that tax exemptions cannot arise from vague inference as the exemption must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden.[5] Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power; that taxation is the rule and exemption is the exception; and that the law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[6]

While the burden is on BCDA to prove that it is entitled to exemption from the proceeds of the sale of its **condominium units** in the Serendra Project, record is bereft of any evidence confirming such exemption.

Worse, a perusal of BCDA's Petition for Review reveals that BCDA anchors its claim for tax exemption on the mistaken notion that BCDA is not a taxable entity and that BCDA is exempt from paying taxes in connection with its sale or disposition activities, viz.:

> "5.10 What is taxable is the subsequent sale of the units of the project to third parties. But the taxability of the subsequent sale by the joint venture partners to third parties finds application only if the seller is a taxable entity, such as BCDA's joint venture partner in this case, ALI. **It does not apply when the seller – such as BCDA – is an entity the law specifically exempts from payment of all forms of taxes in connection with its sale/disposition activities.**"[7] (Boldfacing supplied)

To reiterate, Congress did not make BCDA a tax exempt entity. At most, it provided a limited exemption from all forms of taxes of BCDA's specific income, that is - - "income" or "proceeds of the sale" of Metro Manila military camps and portions of Fort Bonifacio. Note that

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[5] Digital Telecommunications, Inc. v. City Government of Batangas, et al., G.R. No. 156040, December 11, 2008.
[6] Sea-Land Service, Inc. v. Court of Appeals, G.R. No. 122605, April 30, 2001.
[7] Petition for Review, CTA Docket, p. 17.

BCDA, as a corporate entity, is not precluded from deriving income from various taxable transactions as is evident from the powers vested in it by law, *viz.*:

> "REPUBLIC ACT NO. 7227
>
> SECTION 5. Powers of the Conversion Authority. — To carry out its objectives under this Act, the Conversion Authority is hereby vested with the following powers:
>
> (a) To succeed in its corporate name, to sue and be sued in such corporate name and to adopt, alter and use a corporate seal which shall be judicially noticed;
>
> (b) To adopt, amend and repeal its bylaws;
>
> (c) To enter into, make, perform and carry out contracts of every class, and description which are necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with foreign government entities;
>
> (d) To contract loans, indebtedness, credit and issue commercial papers and bonds, in any local or convertible foreign currency from any international financial institutions, foreign government entities, and local or foreign private commercial banks or similar institutions under terms and conditions prescribed by law, rules and regulations;
>
> (e) To execute any deed of guarantee, mortgage, pledge, trust or assignment of any property for the purpose of financing the programs and projects deemed vital for the early attainment of its goals and objectives, subject to the provisions of Article VII, Section 20, and Article XII, Section 2, paragraphs (4) and (5) of the Constitution;
>
> (f) To construct, own, lease, operate and maintain public utilities as well as infrastructure facilities;
>
> (g) To reclaim or undertake reclamation projects as it may deem necessary in areas adjacent or contiguous to the Conversion Authority's lands described in Section 7 of this Act either by itself or in collaboration with the Public Estates Authority (PEA) established under Presidential Decree No. 1084 as amended;
>
> (h) To acquire, own, hold, administer, and lease real and personal properties, including agricultural lands, property rights and interests and encumber, lease, mortgage, sell, alienate or otherwise dispose of the same at fair market value it may deem appropriate;
>
> (i) To receive donations, grants, bequests and assistance of all kinds from local governments and private sectors and utilize the same;

> (j) To invest its funds and other assets other than those of the Special Economic Zones under Section 12 and 15 of this Act in such areas it may deem wise;
>
> (k) To exercise the right of eminent domain;
>
> (l) To exercise oversight functions over the Special Economic Zones declared under this Act and by subsequent presidential proclamations within the framework of the declared policies of this Act;
>
> (m) To promulgate all necessary rules and regulations; and
>
> (n) To perform such other powers as may be necessary and proper to carry out the purposes of this Act."

Truth to tell, the proceeds of BCDA's transactions (other than those pertaining to the sale of portions of Metro Manila military camps and portions of Fort Bonifacio) remain taxable. **The proceeds from the disposition of its condominium units in the Serandra Project, not being covered by specific and clear grant of tax exemption, is taxable**. Accordingly, the CWT withheld and remitted to the BIR on account thereof were not erroneously remitted to, and collected by the BIR; consequently, the CWTs are not refundable under Sections 204 and 229 of the NIRC of 1997, as amended.

All told, I vote to DENY BCDA's Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice