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REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*ALLIED BROADCASTING CENTER, INC.*
*Petitioner,*

- versus -

**C.T.A. Case No. 4998**

*COMMISSIONER OF INTERNAL REVENUE,*
*Respondent.*

Promulgated:
JAN 09 1996

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# DECISION

This is an action for refund filed by petitioner, Allied Broadcasting Center, Inc., against respondent Commissioner of Internal Revenue in the amount of P91,850.30 for alleged erroneous overpayment of documentary stamp tax on a deed of sale and conveyance of real property.

Petitioner is a domestic corporation organized and existing under Philippine Laws.

The facts of the case, based on the evidence on record, are simple and was uncontroverted by the respondent.

On September 30, 1988, petitioner, Allied Broadcasting Center, Inc. and Foundation Specialists Inc. entered into a Contract to sell one (1) condominium unit situated at Legaspi Towers 200, Paseo de Roxas, Makati, Metro Manila, for a consideration of P676,220.00 under the following terms and conditions:

a) Foundation Specialists, Inc. (buyer) will make a downpayment of P100,000.00 upon the execution of the contract and the balance of P576,220.00 will be paid to Allied Broadcasting Center, Inc. (seller) on or before June 7, 1991;

b) Allied Broadcasting Center, Inc. will execute the final deed of sale upon the full payment of the balance of P576,220.00 by Foundation Specialists, Inc. on the date agreed upon by the contracting parties (Exh. A-1 & submarkings).

On June 7, 1991, the Final Deed of Sale was executed by the contracting parties whereby Allied Broadcasting Center, Inc. acknowledged receipt of the full consideration of the sale in the total sum of P676,220.00, thereby completing the absolute and irrevocable sale of the property and the delivery of the Certificate of Title No. 8709 to Foundation Specialists, Inc. (Exh. A & sub-markings).

On June 18, 1991, petitioner paid the amount of P98,612.50 as documentary stamp tax on the transaction which was assessed and computed on the basis of the alleged zonal valuation of the condominium unit sold as evidenced by Payment Order No. C11096851 (Exh. C) and the Confirmation Receipt No. B23156771 (Exh. B), both dated June 18, 1991.

Petitioner claims that the payment of P98,612.50 as documentary stamp tax in said transaction is erroneous and not in accordance with the law as the rate of the tax is based on the alleged zonal valuation of the condominium unit sold and not on the selling price as shown and reflected in the Final Deed of Sale.

Based on the computation made by the petitioner, the documentary stamp tax due on the said deed of sale and conveyance of real property based on the principal consideration of P676,220.00 should only be P6,762.20 and therefore, it made an overpayment of P91,850.30.

On June 9, 1992, petitioner filed with respondent a claim for refund on the aforesaid amount of P91,850.30 as overpayment of documentary stamp tax (Exh. D).

No action was taken by respondent on the administrative claim for refund so that on June 8, 1993, petitioner filed the present case seeking judicial relief as the two-year period provided in Section 230 of the National Internal Revenue Code was about to prescribe.

As stated earlier, respondent did not submit any evidence to dispute the proof presented by petitioner in support of its case, much less present any evidence to uphold her "Special and Affirmative Defenses" that:

> a) Petitioner has failed to state any cause of action under Section 204 of the Tax Code, under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received and that petitioner failed to show in the face of the petition that collection of the documentary stamp tax in the amount of P91,850.50 is illegal or erroneous. The legal presumption is that the collection is lawful and regular;
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> b) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund;

c) That the claim for refund is under investigation.

After petitioner rested its case, respondent through counsel, merely manifested that the issue in this case is "purely legal" and that he is submitting his case on the basis of the record and pleadings. Curiously, aside from the Answer filed by respondent which, as we have stated, was never substantiated, the latter even failed to transmit to this Court the record of the case in her custody as required by Section 2, Rule 7 of the Rules of this Court. Respondent did not also file a memorandum within the time given to her by the Court (see Order of June 13, 1995).

The only issue to be resolved then is the basis for the computation of the documentary stamp tax at the sale: whether it be the actual consideration/selling price or the alleged zonal valuation of the real property sold.

We have no doubt that petitioner has fully established that it has a cause of action based on the statement of facts it has alleged. For a cause of action to exist, the following elements or factors must all exist:

a) a legal right on the part of the plaintiff;

b) a corresponding legal obligation or duty on the part of the defendant;

c) an act or omission of the defendant which violates the legal right of the plaintiff. (Ma-ao Sugar Central vs. Barrios, 79 Phil. 666).

It has been indubitably shown that a Contract to Sell a condominium unit for a consideration of P676,220.00 was entered into by petitioner Allied Broadcasting Center, Inc., as seller, and Foundational Specialists, Inc. as buyer on September 30, 1988. A downpayment of P100,000.00 was made by the buyer at the time of the execution of this contract, the balance and full payment of the purchase price to be made on or before June 7, 1991. A Final Deed of Sale was executed on June 7, 1991, indicating the payment of the full amount of the sale. The bone of contention is on the documentary stamp tax imposed. Petitioner was made to pay the amount of P98,612.50 based on a so-called zonal valuation of the property. Petitioner is of the belief that the assessment and payment made thereof is erroneous and the documentary stamp tax should have been based on the consideration and contract price of the sale. It should have paid only P6,762.20 and therefore an erroneous overpayment of P91,850.30 was made which allegedly entitles Petitioner to a refund.

Based on the evidence submitted by petitioner and in the absence of any countervailing evidence, we find for the petitioner.

Section 196 of the National Internal Revenue Code is in point:

"Sec. 196. **Stamp tax on deeds of sale and conveyance of real property**.- On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any land, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchases, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:

(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any incumbrance, does not exceed one thousand pesos, ten pesos.

(b) for each additional thousand pesos or fractional party thereof in excess of one thousand pesos of such consideration or value, ten pesos.

When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument, or writing subject to such tax, the Commissioner, provincial or city treasurer, or other revenue officer shall from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon. (as amended by P.D. No. 1959).

The basis of documentary stamp tax under Section 196 of the Tax Code is the actual consideration/selling price appearing in the deed of sale (BIR Ruling No. 232-90).

*"Documentary stamp tax on sales of real property shall be affixed at the time the taxable document is executed and at the rates then in force. Contract of sale executed on November 19, 1983 is subject to documentary stamp tax under Section 245 of the Tax Code, as amended, and based on the actual consideration/selling price not on the zonal/market valuation at the time of execution of the Deed of Sale in January 1991 (1991 BIR Ruling)." [Nolledo & Nolledo, The Internal Revenue Code of the Philippines, Annotated, 1993, 16th Rev. Edition, p. 880].*

In the same vein, the Contract to Sell in this case was executed in 1988 and the Final Deed of Sale was executed in 1991. The rate of the documentary stamp tax should be based on the actual consideration/selling price as stated in the Contract to Sell and not on any other valuation, it be zonal or market valuation, which is nowhere to be found in the record as none was introduced or presented as evidence by the respondent.

> *"Sec. 196 explicitly states that the determination of the documentary stamp tax on deeds of sale of real property is to be based on the consideration received or contracted to be paid appearing on the sale document. Under the last paragraph, the Commissioner is allowed to utilize the true market value as basis of the documentary stamp tax only if the consideration is incorrectly stated in the deed of conveyance. Hence, if the consideration is correctly stated in the deed of sale as where the same was determined by public bidding, the use of the true market value or zonal value is not justified. Accordingly in the instant case, the DST should be based on the actual consideration appearing in the deed of sale (BIR Ruling 101, May 11, 1989; De Leon, The National Internal Revenue Code Annotated, 5th ed., 1994, p. 547).*

The above-cited rulings of the BIR are therefor in consonance with the provision of Section 196 of the Tax Code.

In the present case, there was no evidence whatsoever adduced to disprove or even raise any doubt as to the correctness of the statement of the consideration in the Contract to Sell as well as in the Final Deed of Sale executed by the contracting parties.

***In fine***, petitioner is entitled to the refund prayed for. The fact that respondent did not bother to act on the claim for refund of the petitioner notwithstanding that they had sufficient time to do so and in spite of her lame posture contained in her Answer that the claim for refund is "still under investigation," are clear and unmistakable indications that respondent has no serious objection to petitioner's entitlement to refund. (see Ateneo de Manila University vs. Commissioner of Internal Revenue, CTA Case NO. 3213, July 28, 1989).

***WHEREFORE,*** *judgement is hereby rendered ordering respondent to refund to petitioner the amount of ₱91,850.30 as erroneous overpayment of documentary stamp tax.*

***SO ORDERED.***

**RAMON O. DE VEYRA**
Associate Judge

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Judge

**MANUEL K. GRUBA**
Associate Judge

# CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII, of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge
Court of Tax Appeals