REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LOYOLA PLANS CONSOLIDATED, INC.
Respondent.

C.T.A. E.B. NO. 202
(C.T.A. CASE NO. 6977)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on August 22, 2006 under Republic Act No. 9282, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) in CTA Case No. 6977, entitled "Loyola Plans Consolidated, Inc. vs. Commissioner of Internal Revenue", to wit:

1) Decision promulgated on March 15, 2006 granting herein respondent's claim for refund or issuance of tax credit certificate in its favor in the amount of FOUR MILLION SEVENTY ONE THOUSAND SEVEN HUNDRED FIFTY SEVEN AND 80/100 PESOS (P4,071,757.80) representing erroneously paid documentary stamp taxes (DST); and

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2) Resolution promulgated on July 21, 2006 denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Respondent Loyola Plans Consolidated, Inc. is a corporation duly organized under Philippine laws, for the purpose of issuing pre-need plans, such as, pension, memorial, and educational plans with office at the Loyola Building, 849 A. Arnaiz Ave. (formerly Pasay Road), Makati City. On the other hand, petitioner is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits erroneously or excessively paid taxes with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 12, 2002, the Securities and Exchange Commissioner approved the consolidation of Loyola Plans, Inc. and Loyola Education Systems, Inc., to form the new corporation known as Loyola Plans Consolidated, Incorporated, herein respondent. Under the Articles and Plan of Consolidation, executed on March 23, 2001 and approved by the SEC on April 12, 2002, Loyola Plans, Inc. shall consolidate with Loyola Education Systems, Inc. to form a new corporation, referred to as Loyola Plans Consolidated, Inc. Accordingly, upon the effectivity of the consolidation, the separate existence of the constituent corporations, Loyola Plans, Inc. and Loyola Education Systems, Inc., shall cease and the new corporation, Loyola Plans Consolidated, Inc., shall succeed all the rights, privileges, immunities, and franchises, and all the properties, real and personal and mixed of the constituent corporations.

Pursuant to the consolidation, Loyola Plans, Inc. filed and remitted the corresponding documentary stamp taxes on the transfer of its real properties and shares of stocks to Loyola Plans Consolidated, Inc., in the aggregate amount of P4,071,757.80.

On the belief that there was an erroneous payment of documentary stamp taxes made by Loyola Plans, Inc., respondent then filed separate administrative claims for refund or issuance of tax credit certificates with the different Revenue District Offices.

Respondent anchored its claims on the provisions of Sections 176 and 196 of the National Internal Revenue Code (NIRC) of 1997, as well as, on the pertinent provisions of the Corporation Code of the Philippines, Revenue Memorandum Circular No. 44-86 and Republic Act (R.A.) No. 9243, or the Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended.

Having received no reply from the various offices of the petitioner and before it could be barred by prescription, respondent elevated its case to the Court in Division on May 3, 2004.

On March 15, 2006, the Court in Division rendered its assailed Decision granting respondent's claim for refund or issuance of tax credit certificate in its favor in the amount of FOUR MILLION SEVENTY ONE THOUSAND SEVEN HUNDRED FIFTY SEVEN AND 80/100 PESOS (P4,071,757.80) representing erroneously paid DST.

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Reconsideration thereof in the Resolution dated July 21, 2006.

Hence, this recourse before the Court *en banc* praying that the assailed Decision and Resolution of the Court in Division promulgated on March 15, 2006 and July 21, 2006, respectively, be reversed/set aside and a new one be issued denying herein respondent's claim for refund.

In support of his Petition for Review, petitioner submits that the Court in Division erred in holding that the transfer of real properties and shares of stock of Loyola Plans, Inc. to respondent Loyola Plans Consolidated, Inc. is not subject to the DST imposed under Sections 196 and 176, respectively, of the NIRC of 1997.

Meanwhile, respondent filed its "Comment to the Petition for Review" on September 25, 2006 and prayed for the dismissal of the present petition on the following grounds: (a) no documentary stamp taxes are due on the transfer of real properties as a result of the consolidation; (b) no documentary stamp taxes are due on the transfer of shares of stock as a result of the consolidation; (c) the petition for review is a *pro forma* petition, designed to delay the proceedings.

THE ISSUE

The sole issue being raised by petitioner in the instant petition for review is "[w]hether or not respondent is entitled to the refund/tax credit of the amount of P4,071,757.80 as allegedly erroneously paid DST on the transfer of real properties and shares of stocks for the year 2002".

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon in its assailed Decision and Resolution promulgated on March 15, 2006 and July 21, 2006, respectively.

Be that as it may, with the end view of further clarifying the matter, We cite the pertinent provisions of law and revenue regulations in resolving the taxability issue of the subject transfers of real properties and shares of stocks.

1) The approved consolidation of Loyola Plans, Inc. and Loyola Education Systems, Inc. by the Securities and Exchange Commissioner to form the new corporation known as Loyola Plans Consolidated, Incorporated finds legal support under the first paragraph Section 76 of the Corporation Code, which reads:

> "**Section 76. Plan of merger or consolidation**. - Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation."

2) In relation thereto, Section 80 of the same Code sets forth the effects of merger or consolidation, to wit:

> "**Sec. 80. Effects of merger or consolidation**. — The merger or consolidation, as provided in the preceding sections, shall have the following effects:

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> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
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> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
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> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; <u>and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation **without further act or deed**</u>; and
>
> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation." *(Underscoring and emphasis Ours)*

Based on the foregoing legal provisions, specifically paragraph 4 thereof, all property, real or personal, all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving or consolidated corporation **without further act or deed**. Evidently, this is one of the legal effects of a merger or consolidation. It is therefore safe to say, that the transfer of real property and shares of stocks from the absorbed corporation to the surviving corporation is by "**operation of law**", which is defined as "effected by some positive legal rule or amendment."[1]

3) Section 185 of Revenue Regulations No. 26, as amended,[2] which is the Revised Documentary Stamp Tax Regulations, specifically mentions the non-taxability of conveyances without consideration, to wit:

> "**Section 185. Conveyances without consideration. -** Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable." *(Underscoring Ours).*

As mentioned earlier, the transfer of real properties and shares of stocks to Loyola Plans Consolidated, Inc. in the aggregate amount of P4,071,757.80 was a result of the duly approved consolidation of Loyola Plans, Inc. and Loyola Education Systems, Inc. without consideration and by operation of law.

4) Republic Act No. 9243 entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code", was subsequently passed and became effective on April 27, 2004, in order to remove any doubts as to the taxability of any transfers of real properties and shares of stocks made pursuant to a plan of merger or consolidation, more particularly Section 9 thereof, which amends Section 199 of the NIRC of 1997, quoted hereunder as follows:

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[1] Black's Law Dictionary, p. 182, 5th Edition, 1979.

[2] Amended by Regulations No. 77 dated August 8, 1933, Revenue Regulations No. 4-68 dated August 16, 1967, 1-72 (January 28, 1972), 3-75 (May 27, 1975), and PD Nos. 1168 (June 3, 1977) and 1457, See also PD No. 1959, dated October 15, 1984, re omnibus amendments to the Tax Code.

"**Sec. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:**

'**SEC. 199. Documents and papers not subject to stamp tax.** – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

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(m) Transfer of property pursuant to **Section 40 (C)(2)** of the National Internal Revenue Code of 1997, as amended.'

xxx xxx xxx" *(Emphasis Ours)*

Section 40(C)(2) of the NIRC of 1997 states:

"**SEC. 40. Determination of Amount and Recognition of Gain or Loss.** –

xxx xxx xxx

(C) Exchange of property . –

xxx xxx xxx

(2) ***Exception*** – No gain or loss shall be recognized if in pursuance of **a plan of merger or consolidation** –

(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or

47

> securities in another corporation, a party to the merger or consolidation.
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> No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: *Provided,* That stocks issued for services shall not be considered as issued in return for property." *(Emphasis Ours)*

Clearly therefrom, the transfers of real properties and shares of stocks in pursuance of a merger or consolidation are not subject to documentary stamp taxes as there is no actual "purchaser" or "buyer" of real property; said properties, subject of the consolidation, were merely absorbed by the respondent as a legal consequence of the consolidation without any form of consideration being contracted to be paid. Hence, We agree with the respondent that transfers of real properties and shares of stocks, as a result of a merger or consolidation, are not subject to documentary stamp taxes.

5) Under Section 176 of the NIRC of 1997, only sales or voluntary transfers of shares of stocks are subject to DST. Hence, in case of consolidation, the transfer of the shares of stocks to respondent is by operation of law and needs no further deed of conveyance or agreement, aside from the Plan of Merger or Consolidation, to effect said transfer in accordance with Section 80, paragraph 4 of the Corporation Code.

This Court is not unaware of the principle that the burden of proof is upon him who claims the exemptions in his favor and he must be able to justify his claim by the clearest grant of the organic or statute law.[3] This is consistent with the well-established principle that tax refunds are in the nature of a tax exemption and should be construed strictissimi juris against the taxpayer.[4]

However, in the case at bench, We are convinced that respondent was able to establish its claim for refund or issuance of a tax credit certificate in its favor based on the evidence presented and factual and legal findings of the Court in Division.

In the light of the foregoing considerations, We find no reversible error committed by the Court in Division when it rendered the assailed Decision dated March 15, 2006, and Resolution dated July 21, 2006.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

On Leave
ERNESTO D. ACOSTA
Presiding Justice

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[3] China Banking Corporation vs. Court of Appeals, 403 SCRA 634 (2003).
[4] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991).

69

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice