REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*FIRST DIVISION**

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8140

Members:

Del Rosario, *PJ*
Uy, *and*
Mindaro-Grulla, *JJ.*

Promulgated:

SEP 13 2013 ; 8:45 a.m.

x - x

DECISION

DEL ROSARIO, P.J.:

THE CASE

The instant Petition for Review filed by Bases Conversion and Development Authority (BCDA) pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, seeks the refund of the amount of **One Hundred One Million Six Hundred Thirty Seven Thousand Four Hundred Sixty Six Pesos and Forty Centavos** (₱101,637,466.40), allegedly representing creditable withholding tax (CWT) paid on July 31, 2008 in connection with the sale/disposition by BCDA of the 12,036 square-meter property, known as the "Expanded Big Delta Lots", located in Fort Bonifacio, Taguig City.

THE PARTIES

Petitioner is a government instrumentality vested with corporate powers, duly organized and existing under and by virtue of Republic Act (RA) No. 7227[1], as amended, with principal office address at BCDA

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* The case was previously heard by the Court of Tax Appeals (CTA) - Second Division but transferred to CTA-First Division pursuant to CTA Administrative Circular No. 01-

Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City.[2]

Respondent is the Commissioner of Internal Revenue (CIR), vested under appropriate laws with authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia*, the power to decide, approve and grant claims for refund and/or issuance of tax credit certificates for erroneously paid or illegally collected internal revenue taxes. She holds office at 5th Floor, BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

On May 23, 2008, petitioner entered into four separate Contracts to Sell, involving the 12,036 sq. m. "Expanded Big Delta Lots" *(subject property)* located in Bonifacio Global City, Taguig City, with 18-14 Property Holdings, Incorporated, 14-8B Property Holdings Incorporated, The Net Group Project Management Corporation, and The Net Group Property Management Corporation *(buyer-companies)*, all members of the Unincorporated Joint Venture (identified as the "Net Group"[4]), for the total purchase price of ₱2,032,749,327.96, detailed as follows:

Exhibit	Buyer	Area	TCT No.	Purchase Price
A	18-14 Property Holdings, Inc.	3,600 sq. m.	TCT No. 238-P and 239-P	₱ 608,000,796.00
B	14-8B Property Holdings, Inc.	3,150 sq. m.	TC No. 240-P	532,000,696.50
C	The Net Group Project Management Corp.	2,861 sq. m.	TC No. 241-P	483,191,743.71
D	The Net Group Property Management Corp.	2,425 sq. m.	TC No. 242-P	409,556,091.75
TOTAL				**₱2,032,749,327.96**

In a letter dated May 26, 2008, which petitioner received on May 27, 2008, the Net Group informed petitioner that it would defer the remittance of the amount of ₱101,637,466.40 to the BIR, representing the amount of

2013 dated March 26, 2013, "Reorganization of the Three Divisions of the CTA. *(Order dated April 2, 2013; p. 1875, CTA Docket).*

[1] Petitioner BCDA's Charter.

[2] Par. 4, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI); p. 447, CTA Docket.

[3] Par. 1, Stipulation of Facts, JSFI; p. 445, CTA Docket.

[4] Last paragraph of No. 12 of respondent's Answer; pp. 293-310, 299, CTA Docket.

CWT, which it withheld in relation to the above-mentioned sale transactions until petitioner could present on or before June 9, 2008 a written confirmation from the BIR that no CWT was due for the said sale.[5]

Petitioner wrote a letter to the CIR, which the BIR received on May 28, 2008, requesting a confirmation that it is exempted from all taxes and fees, including CWT and value added tax (VAT) on the sale/disposition of the 12,036 sq. m. "Expanded Big Delta Lots" in Fort Bonifacio.[6] Petitioner, however, received no reply from the CIR.[7]

On July 23, 2008, petitioner and the buyer-companies executed Deeds of Absolute Sale.[8]

On July 31, 2008, the buyer-companies, as withholding agents, remitted to BIR RDO No. 44 the amount of ₱101,637,466.40 representing five percent (5%) CWT on the ₱2,032,749,327.96 total purchase price of the subject properties, to wit:

Withholding Agent	Payment Form (BIR Form No. 0605) *(Exhibit)*	BIR Tax Payment Deposit Slip *(Exhibit)*	CWT
The NetGroup Property Management Corp.	J	K	₱ 20,477,804.59
18-14 Property Holdings, Inc.	M	N	15,200,019.90
18-14 Property Holdings, Inc.	P	Q	15,200,019.90
14-8B Property Holdings, Inc.	S	T	26,600,034.83
The Net Group Project Management Corp.	V	W	24,159,587.19
Total			**₱101,637,466.41**

The buyer-companies accordingly issued Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) in the name of petitioner, summarized as follows:

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[5] Exhibits "Z" and "Z-1"; p. 220, CTA Docket.
[6] Exhibit "I"; pp. 1652-1653, CTA Docket.
[7] Exhibit "HH"; pp. 1712-1724, 1722, CTA Docket.
[8] Exhibits "E", "F", "G", and "H"; pp. 1390, 1459, 1524, and 1587, CTA Docket.

Withholding Agent	Certificate of Creditable Tax Withheld at Source (Exhibit)	CWT
The NetGroup Property Management Corp.	L	₱ 20,477,804.59
18-14 Property Holdings, Inc.	O	15,200,019.90
18-14 Property Holdings, Inc.	R	15,200,019.90
14-8B Property Holdings, Inc.	U	26,600,034.83
The Net Group Project Management Corp.	X	24,159,587.19
TOTAL		**₱101,637,466.41**

On March 9, 2009, petitioner filed a letter[9] dated February 28, 2009 (*with attachments*) with respondent claiming for a refund of the amount of ₱101,637,466.40, allegedly representing erroneously or illegally collected CWT relative to the sale of the above-mentioned property.

Respondent failed to act on petitioner's claim for refund,[10] prompting petitioner to file the instant Petition for Review on July 29, 2010.[11]

In the Resolution[12] dated October 18, 2010, the Court admitted respondent's belatedly filed Answer. In her Answer,[13] respondent interposed the following special and affirmative defenses:

> "5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, on the prescriptive period for claiming tax refund/credit.
>
> 9. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

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[9] Exhibit "AA"; pp. 231-233, CTA Docket.
[10] Par. 5, JSFI; p. 447, CTA Docket.
[11] p. 2, CTA Docket.
[12] pp. 321-322, CTA Docket.
[13] pp. 293-310, CTA Docket.

10. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of One Hundred One Million Six Hundred Thirty Seven Thousand Four Hundred Sixty Six Pesos and 40/100 (P101,637,466.40) representing alleged unutilized creditable withholding tax for taxable year 2008.

11. Petitioner, in its Petition for Review, alleged that it is a government instrumentality that is vested with corporate powers duly organized and existing under and by virtue of Republic Act No. 7227 otherwise known as the Bases Conversion and Development Act of 1992.

12. By virtue of which, it likewise alleged that Section 8 of aforesaid RA [7]227 as amended by RA 7917 intended the proceeds of its sale to be exempt from the payment of all forms of taxes. It alleged that Section 8 as amended by RA 7917 avers:

> '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.'

It bears stressing that RA 7917 was approved and enacted into law on February 24, 1995.

Contrary to the aforesaid provision of law, respondent humbly manifests that with the advent of the NIRC of 1997, as amended, which took effect on January 1, 1998, petitioner, being a governmental entity, is liable to pay income tax pursuant to the provision of Section 27(C) thereof which explicitly provides:

> '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.' (Emphasis and underscoring supplied)

On the basis of the foregoing provision of law, it is clear as water that petitioner, being a governmental instrumentality owned and controlled by the Government is liable to pay income tax. It is quite important to emphasize that this is notwithstanding any provision of existing special law like RA 7227. Hence, the NIRC of 1997 which was implemented in 1998 shall be supreme and remain in force over RA 7917 which took effect in 1995. 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, being not one of those excluded from the coverage, is therefore, not exempt from the payment of income taxes.

It is a basic precept in statutory construction that when the law is clear, the function of the courts is simple *(sic)* to apply the law. Time and again, where the law speaks in clear and categorical language, there is no room for interpretation, vacillation, or equivocation; there is room only for application.

In relation thereto, the NIRC of 1997, as amended by Republic Act No. 9337 on July 1, 2005 provides:

> 'Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> > Sec. 27. Rates of Income Tax on Domestic Corporations. –
> >
> > xxx
> >
> > (C) *Government-owned or –Controlled Corporations, Agencies or Instrumentalities.* – **<u>The provisions of existing special or general laws to the contrary notwithstanding</u>**, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), **<u>shall pay such rate of tax upon their taxable income</u>** as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. xxx
>
> Sec. 24. *Repealing Clause.* – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> xxx
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.
>
> xxx

> Sec. 26. *Effectivity Clause.* – This Act shall take effect on July 1, 2005. Xxx' (Emphasis and underscoring supplied)

Again, by express provision of RA 9337, it is a glaring reality that government instrumentalities are still liable to pay income tax. The only remaining four (4) institutions that are exempt to pay income tax are the GSIS, SSS, PHIC and PCSO. Ergo, petitioner, being a government instrumentality and not excluded from the exempt institutions, is still liable to pay the income taxes.

In the case entitled '*Florencio Eugenio vs. Secretary Franklin M. Drilon et al.*,' the Supreme Court held:

> 'xxx The intent of the law, as culled [from] the situation, circumstances and conditions it sought to remedy, must be enforced. On this point, a leading authority on statutory construction stressed:
>
> The intent of a statute is the law . . . . The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. **The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act** . . . . In construing statutes, the proper course is to start out and follow the trite intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.' (Emphasis and underscoring supplied.)

Corollary thereto, in '*Republic of the Philippines et al. vs. Carlito Lacap,*' the Supreme Court eloquently propounded:

> 'The 'plain meaning rule' or *verba legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.'

In the case of '*Martin Centeno vs. Hon. Victoria Villalon-Pornillos et al.*', the Supreme Court had the occasion to say:

> 'xxx Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *'expressio unius est exclusio alterius.'* Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise **that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned**. xxx' (Emphasis and underscoring supplied)

Suffice it to say that the taxes withhold *(sic)* from petitioner out of the income it derived from the sale of real properties to the unincorporated joint venture identified as the 'NetGroup' is a form of Income Tax that will be credited in its favor and declared under CWT (BIR Form No. 2307). The CWT becomes part and parcel of the Quarterly and Annual Income Tax Return of petitioner to be used for the purpose of offsetting the income tax liabilities of petitioner for a given taxable year. The CWT paid is deducted from the income tax liabilities of petitioner shown in its Annual Income Tax Return to arrive at the remaining income tax still payable.

13. Having established that petitioner is liable to pay CWT while its buyers, the 'NetGroup', are obliged to remit the withholding taxes due, the following pertinent provisions of law are applicable relative to the manner of computing, payment and remittance of the CWT.

RR 6-2001 dated July 31, 2001 provides:

> 'SECTION 3. Revised Rules of Creditable Withholding Tax – Section 2.57.2 of Revenue Regulations 2-98, as amended, is hereby further amended to read as follows:
>
> xxx
>
> J. Gross Selling Price of *(sic)* total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset – A creditable withholding tax based on the Gross Selling Price/total amount of consideration or the Fair Market Value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the

withholding agent/buyer, in accordance with the following schedule:

xxx

B. Upon the following values of real property, where the seller/transferor is habitually engaged in real estate business;

xxx

With a selling price of more than Two Million Pesos	*5%*

xxx

If the buyer is an individual not engaged in trade or business, the following rules shall apply:

(i) If the sale is a sale of property on the **installment** plan, that is **payments in the year do not exceed 25% of the selling price**), no withholding tax is required to be made on the periodic installment payments. In such a case, the applicable tax rate of tax *(sic)* based on the gross selling price or fair market value of the property, whichever is higher, shall be withheld on the last installment or installments to be paid to the seller until the tax is fully paid;

(ii) If on the other hand, the sale is on a '**cash basis**' or is a '**deferred payment sale** on the installment plan' (that is, **payments in the year of sale exceed 25% of the selling price**), the buyer shall **withhold the tax** based on the gross selling price or fair market value of the property, whichever is higher, **on the first installment.**

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

(i) If the sale is a sale of property on the installment plan (that is, payments in the year of sale do not exceed 25% of the selling price), the tax shall be deducted and withheld by the buyer on every installment.

(ii) If, on the other hand, the sale is on a 'cash basis' or is a 'deferred-payment sale not on the installment plan' (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.'

SECTION 4. Time for Filing of Withholding Tax and VAT Returns and the Payment of Taxes Due Thereon. – xxx

(1) Section 2.58 (A) (2) and 2.81 of RR No. 2-98, as amended are hereby further amended to read as follows:

Section 2.58 – RETURNS AND PAYMENTS OF TAXES WITHHELD AT SOURCE

(A) Monthly return and payments of taxes

xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax returns, whether creditable or final (including final withhold *(sic)* taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month**, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the **Electronic Filing and Payment System (EFPS)**, the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be **five (5) days later than the deadlines** set above'. (Emphasis and underscoring supplied)

Corollary thereto, Revenue Regulations No. 12-2001 dated September 7, 2001 provides:

'Section 4. Time of Withholding. – Section 2.57.4 of RR 2-98 is hereby amended, to read as follows:

Section 2.57.4. Time of Withholding – The obligation of the payor **to deduct and withhold the tax** under Section 2.57 of these Regulations arises **at the time an income payment is paid** or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.' (Emphasis and underscoring supplied)

Petitioner allegedly sold properties to an unincorporated joint venture called the 'NetGroup' on May 23, 2008 for the total purchase price of Two Billion Thirty Two Million Seven Hundred Forty Nine Thousand Three Hundred Twenty Seven Pesos and 96/100 (P2,032,749,327.96) broken down as follows:

Date of Contract to Sell	Name of Buyer	Purchase Price	Downpayment on May 23, 2008	Rate of Down payment	Balance 31-Jul-08	5% CWT on Gross Selling Price	Date of Remittance
23-May-08	18-14 Property Holdings Inc.	608,000,796.00	179,461,615.15	30%	428,539,180.85	30,400,039.80	31-Jul-08
23-May-08	14-8B Property Holdings, Inc.	532,000,696.50	157,028,913.26	30%	374,971,783.24	26,600,034.83	31-Jul-08
23-May-08	NetGroup Project Mngt Corp.	483,191,743.71	142,622,133.60	30%	340,569,610.11	24,159,587.19	31-Jul-08
23-May-08	NetGroup Project Mngt Corp.	409,556,091.75	120,887,337.90	30%	288,668,753.76	20,477,804.59	31-Jul-08
Total		2,032,749,327.96	600,000,000.00		1,432,749,327.96	101,637,466.40	

Based on the foregoing provision of law, the 'NetGroup', being a withholding agent, is under obligation to deduct and withhold the tax which arises at the time the income payments are made on May 23, 2008. Although the terms of the contract provide that payments are made on installment basis, where the down payment is made upon signing the contract and the last payment on or before July 23, 2008, still, since full payment and not only 25% were made within the entire year, the withholding agent shall withhold the CWT based on the gross selling price or fair market value of the property, whichever is higher, *on the first installment*. In which case, the CWT should be withheld on May 23, 2008. The amount of CWT shown in the diagram should be remitted within ten (10) days of the following month. The only exception to the rule is when petitioner is considered an EFPS taxpayer, in which case, the remittance should be made 5 days after the deadline set or fifteen (15) days following the month of sale.

In the case at hand, petitioner should pay the entire CWT on the date of actual sale on May 23, 2008 and not on July 23, 2008. For having belatedly paid the same, through its withholding agent, on July 23, 2008, the withholding agent ought to pay the interest and surcharges as provided under Section 248 and 249 of the NIRC of the 1997, as amended. In addition, the Withholding Agent failed to file BIR Form No. 1606 (Withholding Tax Remittance Return [For Transactions Involving Real Property Other than Capital Asset including Taxable and Exempt]).

14. Petitioner anchored its assertions that it is exempt from the payment of CWT on the basis of the tax rulings it alleged in its Petition for Review. Petitioner heavily invoked and relied on said rulings in applying for refund of the CWT it allegedly paid to respondent. Assuming for the sake of arguments that indeed said rulings were issued by respondent, still it must be stressed that respondent's filing of the Answer is *<u>tantamount to a revocation</u>* of the tax rulings issued.

In the case entitled 'Commissioner of Internal Revenue, *petitioner* vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc. *respondent',* the Supreme Court had the occasion to say:

> '**Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95**. However, such revocation cannot be given retroactive effect since it will prejudice respondent. Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax. Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer. Further, there is no showing of the existence of any of the exceptions enumerated in Section 246 of the Tax Code for the retroactive application of such revocation.
>
> However, upon the filing of petitioner's Answer dated 2 March 2000 before the CTA contesting respondent's claim for refund, respondent's services shall be subject to the regular 10% VAT. Such filing is deemed a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95'. (Emphasis and underscoring supplied)

It must be stressed that tax rulings issued and alleged in the Petition for Review do not pertain to the particular sale transaction made by petitioner. In addition, tax [r]ulings are issued primarily based on the facts presented by the applicants. Hence, tax rulings may vary from time to time depending on the set of facts that may be presented. As the concluding remarks of tax rulings state:

> 'This ruling is issued on the basis of the foregoing facts are *(sic)* represented. However, **if upon investigation**, it will be ascertained that the **facts are different**, then this ruling shall be considered **null and void**.' (Emphasis and underscoring supplied)

Ergo, tax rulings are not considered final, hence, may be the subject of revocation at any time depending on the further investigation that may be conducted.

It must likewise be stressed that petitioner did not request for a tax ruling before the Office of the Commissioner of Internal Revenue prior to the intended sale on May 23, 2008. It was only on May 28, 2008 that petitioner was able to request for a ruling which is way beyond the May 23, 2008 sale transactions.

The Four (4) Contracts to Sell made and entered into on May 23, 2008 by petitioner and its buyers reveal the following: mm

> 'ARTICLE IV.
> TITLE AND OWNERSHIP OF SUBJECT PROPERTY
>
> SECTION 1. Title to the Subject Property. – Title to the subject property is reserved in the name of BCDA until full and complete payment of the Purchase Price. Only upon full and complete payment by the BUYER of the purchase price in accordance with the provisions of Article III Section 1 above shall BCDA execute a Deed of Absolute Sale in favour of the BUYER, which shall substantially be in the form attached thereto as Annex 'H'. Coincidentally with the signing of the Deed of Absolute Sale, and (iii) Real Property Tax Clearance covering the subject property **as well as the document evidencing payment of the Creditable Withholding Tax due on the sale of the Subject Property**, if any.
>
> xxx
>
> SECTION 3. Taxes, Fees and Expenses – **Except for the Creditable Withholding Tax**, if any, all applicable taxes, fees and any other charges related to the sale, transfer and registration of the Subject Property, such as, but not limited to, when such is applicable, documentary stamp taxes, (DST), business or city taxes, transfer taxes and registration fees and other charges shall be for the account of the BUYER. xxx
>
> ARTICLE V
> DELIVERY OF THE SUBJECT PROPERTY
>
> Section 1. Delivery of the Subject Property. Upon full payment of the balance of the Purchase Price and the execution of the Deed of Absolute Sale, BCDA shall deliver to the BUYER the Subject Property on an 'AS IS WHERE IS BASIS'. xxx Coincidentally with BCDA's receipt of full payment for the Balance of the Purchase Price and the execution of the Deed of Absolute Sale, BCDA shall deliver to the BUYER (i) the Transfer Certificate of Titles (TCT), (ii) the Tax Declarations' and (iii) Real Property Tax Clearance **covering the Subject property, as well as the document evidencing payment of the Creditable Withholding Tax due** on the sale of the Subject property, if any.' (Emphasis and underscoring supplied)

Based on the foregoing, it cannot be gainsaid that petitioner, who prepared the contract, provided a provision pertaining to the payment of Creditable Withholding Tax as a sine qua non condition for the delivery of the property and transfer of title over said property. Petitioner would not have included aforesaid provision had it not been aware that it is liable for the payment of the corresponding CWT. It was petitioner who prepares the stipulations in the contract, the buyers consented by affixing the signature of its authorized representative or its 'adhesion' to bind the party.

In the case entitled '*Federico Serra vs. The Honorable Court of Tax Appeals and Rizal Commercial Banking Corporation*', the court held:

> 'A **contract of adhesion** is one wherein a party, usually a corporation, prepares the stipulations in the contract, while the other party merely affixes his signature or his 'adhesion' thereto. These types of contracts are as binding as ordinary contracts. Because in reality, the party who adheres to the contract is free to reject it entirely. Although, this Court will not hesitate to rule out blind adherence to terms where facts and circumstances will show that it is basically one-sided.' (Emphasis and underscoring supplied)

15. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

> a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;
>
> b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
>
> c.) That the income upon which the taxes were withheld were included in the return of the recipient.

Petitioner failed to state that the Income pertaining to the sales made on May 23, 2008 were included as part of the Income declared in its Annual Income Tax Returns for taxable year 2008. In relation thereto, the Financial Statements alleged in its Petition for Review were not audited by the Commission of *(sic)* Audit, hence, not reflective of the true financial conditions and net worth of petitioner.

As found in the document denominated as 'A Report of Independent Certified Public Accountants to Accompany Income Tax Return' duly signed by Ma. Sylva Z. Isiderio, State Auditor V, Commission on Audit and which is attached to the Petition for Review as Annex 'L', it clearly provides:

> 'The accompanying balance sheet of the Bases Conversion and Development Authority as of December 31, 2009 and the related statements of income for the year then ended were prepared from the Authority's books.

> **These financial statements are subject to any additional adjustments as may be disclosed upon the completion of our examination.** Since the audit is currently in progress, we are unable to express an opinion on the fairness of the presentation of the financial statements.
>
> Likewise, for the same reason stated above, to date, **we are not in a position to comply** with the **required audited financial statements** of the above authority for the year ended December 31, 2009. (Emphasis and underscoring supplied)

16. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

17. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

18. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)*. 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 (Sealand Service Vs. Court of Appeals, 357 SCRA 444)." *(Citation omitted)*

Within the allowed period,[14] petitioner filed on November 9, 2010 its Reply[15] to respondent's Answer. Petitioner states therein that (1) the proceeds from the sale of the "Expanded Big Delta Lots" to the "NetGroup" is not subject to CWT, and (2) the grant of tax exemption to petitioner pursuant to Section 8 of RA No. 7227, as amended, prevails over the alleged withdrawal of exemption pursuant to RA No. 8424 or the "Tax Reform Act of 1997".

During pre-trial, both parties filed their respective pre-trial briefs.[16] The parties also filed their Joint Stipulation of Facts and Issues on June 21, 2011[17] and the Court approved it in the Resolution[18] dated June 23, 2011. In the same Resolution, the pre-trial was deemed terminated and the parties were ordered to proceed with the trial.

[14] Order dated October 29, 2010; p. 326, CTA Docket.
[15] pp. 330-346, CTA Docket.
[16] pp. 363-367 & 369-383, CTA Docket.
[17] pp. 445-451, CTA Docket.
[18] p. 453, CTA Docket.

During trial, petitioner presented its testimonial and documentary evidence. Its pieces of documentary evidence were admitted in the Court's Resolution dated October 25, 2012.[19] On the other hand, in a hearing held on January 16, 2013, respondent's counsel manifested that she has no witness to present. Upon motion of the parties, they were granted thirty (30) days or until February 15, 2013 to file their respective memoranda.[20]

The parties filed their respective memoranda within the extended period allowed by this Court.[21] Subsequently, the case was submitted for decision on April 26, 2013.[22]

Hence, the Court's instant decision.

ISSUES

The parties raised the following issues[23] for the Court's resolution, to wit:

1. Whether or not the proceeds from the sale of properties owned by petitioner are exempt from all forms of taxes pursuant to its charter;

2. Whether or not the proceeds from the sale of the "Expanded Big Delta Lots" owned by petitioner to the "Net Group" are exempt from the payment of CWT;

3. Whether or not petitioner is entitled to a refund in the amount of ₱101,637,466.40;

4. Whether or not petitioner is liable to pay income tax pursuant to Section 27(C) of the NIRC of 1997, as amended by RA No. 9337;

5. Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund; and,

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[19] pp. 1785-1786, CTA Docket.
[20] p. 1794, CTA Docket.
[21] pp. 1805-1840; 1846-1872, CTA Docket.
[22] p. 1877, CTA Docket.
[23] JSFI; pp. 448-449, CTA Docket.

6. Whether the filing of Answer against the Petition for Review is tantamount to a revocation of tax rulings issued by respondent.

PARTIES' ARGUMENTS

Petitioner argues that it is exempt from payment of all forms of taxes, including CWT, pursuant to Republic Act (RA) No. 7227, as amended by RA No. 7917. Allegedly, it has been legally guided by Administrative Order (AO) No. 236, *"Prescribing Rules and Regulations on the Collection, Remittance and Utilization of Sales Proceeds under Republic Act No. 7227 as Amended by Republic Act No. 7917,"* declaring that the proceeds from the sale of government lands and other properties pursuant to Section 8 of RA No. 7227 as amended by RA No. 7917, are government funds and shall be remitted to the National Treasury and shall accrue to the General Fund of the Government. Further, petitioner insists that the National Internal Revenue Code (NIRC) of 1997 did not repeal petitioner's exemption from payment of all forms of taxes and fees noting that Sec. 32(B)(7)(b) of the NIRC excludes from gross income and exempts from income tax, income derived from the discharge of any essential government functions accruing to the government; and that the income payment to petitioner is not subject to CWT pursuant to Section 2.57.5 (A) of Revenue Regulations (RR) No. 2-98.

Petitioner also points out that it is an established rule of statutory construction that between a general law and a special law, the special law prevails. Likewise, where there are two statutes, the earlier special and the later, general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general; one as a general law of the land, the other as the law of a particular case.

Petitioner finally argues that it was constrained to pay the huge docket fees in compliance with the Court's Resolution promulgated on April 5, 2011 in order that its petition for review be given due course. As a government instrumentality vested with corporate powers, it is not abandoning its position that it is exempt from payment of docket fees pursuant to Section 22, Rule 141 of the Rules of Court.

Respondent counter-argues that petitioner is not exempt from paying taxes pursuant to Section 27(C) of the NIRC of 1997, as amended. She emphasizes that the said provision makes petitioner liable to pay income tax notwithstanding any existing special law like RA No. 7227 and RA No. 7917. According to respondent, the only government-run entities that are exempt from the payment of income tax are limited to GSIS, SSS, PHIC, and PCSO. In this connection, respondent states the basic precept in statutory construction that when the law is clear, the function of the courts is simply to apply the law.

Respondent further alleges that the tax rulings cited in the Petition for Review do not pertain to the subject sales transaction of petitioner. Tax rulings are issued based on the facts presented by the applicants; hence, may vary from time to time depending on the set of facts that may be presented. Even though said rulings were issued by respondent, still it must be stressed that respondent's filing of the Answer is tantamount to a revocation of the tax rulings issued. *Ergo*, tax rulings are not considered final and may be the subject of revocation at any time depending on the result further investigation that may be conducted.

Respondent also asserts that in a refund case, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. She contends that petitioner failed to submit relevant documents to support its application (administrative claim) for refund. According to respondent, the taxpayer must prove compliance with the list of requirements to be submitted involving claims for creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98, and that of Revenue Regulations No. 2-2006, otherwise, there would be no sufficient compliance with the filing of an administrative claim for refund. While petitioner filed an administrative claim for refund, the same is considered merely pro forma as it failed to submit documentary evidence to prove its entitlement thereto. Respondent also claims that petitioner failed to state that the income pertaining to the sales made on May 23, 2008 were included as part of the income declared in its annual income tax return for taxable year 2008.

THE COURT'S RULING

Petitioner's compliance with the periods specified under Sections 204 and 229 of the NIRC of 1997, as amended

Sections 204 (C) and 229 of the NIRC of 1997 provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -

on

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."
>
> "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."

Sections 204(C) and 229 of the NIRC of 1997 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.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[25] Thus, petitioner has two (2) years from the date of payment or remittance to the BIR of the

[24] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973.

[25] Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals, G.R. No. L-24108, January 3, 1968; J. N. Sweeney, A. O. Baigrie, and Ramon Burgas vs. Collector, G.R. No. L-12178, August 21, 1959; P.J. Kiener Company, Ltd., v. Saturnino David, G.R. No. L-5163, April 23, 1953.

CWT within which to file both its administrative and judicial claims for refund.

The present claim pertains to erroneously withheld CWTs that were remitted to the BIR on July 31, 2008. Counting from this date, petitioner had until July 31, 2010 within which to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim for refund filed before the Commissioner of Internal Revenue on March 9, 2009[26] and the subsequent appeal before this Court via a Petition for Review filed on July 29, 2010[27] fell within the two-year prescriptive period.

Petitioner's submission of documents in support of its administrative claim for refund

Respondent alleges that petitioner is not entitled to refund representing the alleged erroneously withheld and remitted CWT on the sale of the 'Expanded Big Delta Lots' because petitioner failed to submit all necessary and relevant supporting documents with the BIR in support of its administrative claim for refund. Respondent claims that petitioner's administrative claim for refund is considered merely pro forma as it failed to submit documentary evidence to prove its entitlement thereto.

The Court finds respondent's allegation bereft of merit.

Records show that on March 9, 2009, petitioner filed a letter[28] dated February 28, 2009, *together with supporting documents,* with respondent claiming for a refund of the amount of ₱101,637,466.40, representing erroneously or illegally collected CWT relative to the sale of the above-mentioned properties. It appears from the records, however, that from the filing of petitioner's administrative claim for refund with supporting documents on March 9, 2009 until the date set for presentation of respondent's evidence on January 16, 2013, the BIR did not act on petitioner's claim or requested petitioner to submit additional documents in support of its claim for refund. If indeed the documents submitted by petitioner were not sufficient to support its claim for refund, respondent could still act on petitioner's claim by requesting for additional supporting documents or denying petitioner's claim outright.

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[26] Exhibit "AA"; pp. 231-233, CTA Docket.
[27] pp. 2-15, CTA Docket.
[28] Exhibit "AA"; pp. 231-233, CTA Docket.

Since respondent has not acted on petitioner's administrative claim for refund, petitioner was constrained to file the instant Petition for Review with this Court prior to the expiration of the two-year provided under Section 229 of the NIRC of 1997.

At the judicial level, claims for refund are being decided based on what has been presented and formally offered by party litigants during the trial of the case. The case records disclosed that petitioner was able to sufficiently substantiate its judicial claim. Based on the Payment Forms (BIR Form No. 0605)[29] and BIR Tax Payment Deposit Slips[30] offered by petitioner, the buyer-companies, as withholding agents, remitted to the BIR on July 31, 2008 the amount of ₱101,637,466.40 representing five percent (5%) CWT computed based on the ₱2,032,749,327.96 total purchase price of the subject properties. The said CWT is supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[31] issued in the name of petitioner by the buyer-companies.

Exemption of the proceeds from the sale of properties owned by petitioner from all forms of taxes pursuant to petitioner's Charter

Petitioner anchored its claim for tax exemption primarily on RA No. 7227, as amended by RA 7917. On the other hand, respondent asserts that petitioner is not exempt from paying taxes (like income tax and consequently, from withholding tax) pursuant to Section 27(C) of RA No. 8424 *[NIRC of 1997]*, as amended, as the said provision makes petitioner liable to pay income tax notwithstanding any existing special law like RA No. 7227, as amended by RA No. 7917.

At this juncture, it is important to look into the history of the NIRC specifically regarding the taxation of the income of all corporations, agencies, or instrumentalities owned or controlled by the Government.

Section 24 of Presidential Decree No. 1158, otherwise known as the NIRC of 1977, declared that all corporations, agencies, or instrumentalities owned or controlled by the Government are subject to income tax, *viz.*:

> "(c) Government-owned or controlled corporations, agencies, or instrumentalities. — The provisions of existing special or general laws to

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[29] Exhibits "J", "M", "P", "S" and "V"
[30] Exhibits "K", "N", "Q", "T" and "W"
[31] Exhibits "L", "O", "R", "U" and "X"

> the contrary notwithstanding, all corporate taxpayers not specifically exempt under Section 26 of this Code shall pay the rates provided in this Section. **All corporations, agencies, or instrumentalities owned or controlled by the Government**, including the Government Service Insurance System and the Social Security System, shall pay such rate of tax upon their taxable income as are imposed by this section upon associations or corporations engaged in a similar business, industry, or activity." *(Emphasis supplied)*

Later, RA No. 8424, otherwise known as the NIRC of 1997, took effect on January 1, 1998 maintaining the taxability of government owned or controlled corporations, agencies, or instrumentalities. This time, however, the NIRC provided income tax exemptions to certain government owned or controlled corporations, agencies or instrumentalities. Section 27(C) thereof states:

> "(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."

Subsequently, RA No. 9337 was enacted in 2005 amending certain sections of the NIRC of 1997, one of which was the afore-quoted Section 27(C). It excluded PAGCOR from the enumeration of government owned or controlled corporations, agencies or instrumentalities that are exempt from payment of corporate income tax, thus:

> "(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 and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), 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." *(Emphasis supplied)*

It is clear that as early as the 1977 NIRC until the NIRC of 1997, as amended by RA No. 9337 took effect, all government-owned or controlled corporations, agencies or instrumentalities are liable for income tax on their taxable income. The only difference is that under the NIRC of 1997, as amended by RA No. 9337, the law enumerated certain government owned or controlled corporations, agencies, or instrumentalities as exempted from income tax, namely: *the GSIS, SSS, PHIC and PCSO.*

When Congress created petitioner in 1992 by virtue of RA No. 7227 (BCDA Charter), just like any other government instrumentality vested with corporate powers, Congress did not deem it proper to exempt petitioner from payment of corporate income tax as so provided in the NIRC of 1997. Subsequently, however, Congress amended RA No. 7227 to **specifically exempt the proceeds of the sale by petitioner of the portions of Metro Manila military camps from all kinds of taxes and fees**. Pertinent parts of RA No. 7917, which amended RA No. 7227, state:

> "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)

Under RA No. 7227, as amended by RA No. 7917, Congress did not make petitioner itself a tax exempt entity, but Congress clearly and unequivocally declared that the proceeds from the sale by petitioner of portions of Metro Manila military camps are exempt from all forms of taxes.

Thus, petitioner is obliged to pay corporate income tax under either the 1977 NIRC or the NIRC of 1997, as amended by RA No. 9337, albeit petitioner's income tax liability is limited to its **taxable income** only. Since RA No. 7227, as amended by RA No. 7917 exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, which necessarily includes income tax, **said proceeds do not form part of petitioner's taxable income**. The proceeds of the sale of portions of Metro Manila military camps, not being part of petitioner's taxable income, are exempt from income tax and consequently, from CWT. To emphasize, while petitioner is not entitled to exemption from income tax, the **proceeds from the sale of portions of Metro Manila military camps** are tax exempt.

Evidently, the 1977 NIRC and the NIRC of 1997, as amended by RA No. 9337, focused on the taxability of government owned or controlled corporations, agencies or instrumentalities. In subjecting the taxable income of government owned or controlled corporations, agencies or instrumentalities to corporate income tax, Congress did not intend to withdraw the income tax exemption granted on specific transactions undertaken by government owned or controlled corporations, agencies or instrumentalities, like the one extended to petitioner under RA No. 9337, as amended by RA No. 7917, which exempts the proceeds derived by petitioner from the sale of portions of Metro Manila military camps from all forms of taxes.

As oft-repeated, at the time RA No. 7917 took effect in 1995, the prevailing rule under the 1977 NIRC is that all income derived from whatever source is taxable.[32] The same rule is retained in the NIRC of 1997 (RA 8424),[33] as amended by RA No. 9337. RA No. 7917, which provides tax exemptions on the proceeds derived by petitioner from the sale of portions of Metro Manila military camps is a special law; whereas, the NIRC, which provides the rule on the taxability of all income from whatever

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[32] Sections 27 and 28 of the 1977 NIRC.
SECTION 27. Taxable Income. — The term "taxable income" means the pertinent items of gross income specified in this Code less the deductions, if any, authorized by such type of income by this Code or other special laws: Provided, That for purposes of Section 21 (b) "taxable income" means gross income from all sources without the Philippines less the deductions allowed in Section 29 (m). (As amended by E.O. No. 37)
SECTION 28. Gross Income. — (a) General definition. — Gross income means all income from whatever source derived, including (but not limited to) the following items: xxx *(Underscoring supplied)*
[33] Sections 31 and 32 of the 1997 NIRC.

source is a general law. This being the case, Congress intended the tax exempt provision of RA No. 7917 to constitute as an exception to the general law provided in the NIRC. It is a canon of statutory construction that a special law prevails over a general law -regardless of their dates of passage- and the special is to be considered as remaining an exception to the general.[34]

It has been settled that 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.[35] 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 encompass petitioner's exemption from taxation would be unwarranted.[36]

Considering that the proceeds from sale of petitioner's subject property are exempt from income tax, the CWTs which were withheld by buyer-companies amounting to ₱101,637,466.40 were erroneously remitted to, and collected by the BIR. The claimed amount of ₱101,637,466.32 constitutes erroneously withheld income tax, which is refundable pursuant to Sections 204 and 229 of the NIRC of 1997, as amended.

Truth to tell, petitioner was able to sufficiently substantiate its claim for refund. The Payment Forms (BIR Form No. 0605)[37] and BIR Tax Payment Deposit Slips[38] offered by petitioner evince that the buyer-companies, as withholding agents, remitted to the BIR on July 31, 2008 the amount of ₱101,637,466.40 representing five percent (5%) CWT computed based on the ₱2,032,749,327.96 total purchase price of the subject properties. The said CWT is supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[39] issued in the name of petitioner by the buyer-companies.

In fine, petitioner has sufficiently proven that it is entitled to a refund in the amount of ₱101,637,466.40 representing creditable withholding tax

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[34] Lopez v. Civil Service Commission, G.R. No. 87119, April 16, 1991.
[35] Sea-Land Service, Inc. v. Court of Appeals, G.R. No. 122605, April 30, 2001.
[36] *Id.*
[37] Exhibits "J", "M", "P", "S" and "V"
[38] Exhibits "K", "N", "Q", "T" and "W"
[39] Exhibits "L", "O", "R", "U" and "X"

paid on July 31, 2008 in connection with the sale/disposition of the 12,036 square-meter property, located in Fort Bonifacio, Taguig City.

The Court finds the other issues raised by the parties no longer necessary in the disposition of this case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** in favor of petitioner **BASES CONVERSION DEVELOPMENT AUTHORITY** the amount of **₱101,637,466.40**, representing creditable withholding tax paid on July 31, 2008 in connection with the sale/disposition of the 12,036 square-meter property, otherwise known as the "Expanded Big Delta Lots", located in Fort Bonifacio, Taguig City.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

ROMAN G. DEL ROSARIO
Presiding Justice