REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION BANK OF THE PHILIPPINES – TRUST AND INVESTMENT DIVISION,
Petitioner,

- versus -

C.T.A. CASE NO. 6299

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 0 2 2003

x - x

DECISION

This case involves an assessment for deficiency surcharge and interest allegedly due to late filing/payment of capital gains and documentary stamp taxes by petitioner for the year 1990 in the aggregate amount of P33,900.00.

Petitioner executed a Deed of Absolute Sale in its capacity as Trustee for and in behalf of Carolyn Laserna, Conrad Laserna and Bruce Roy Laserna involving a property covered by Transfer Certificate Title No. 164115 registered with the Registry of Deeds for Manila. The property was sold to Steelcraft Industrial and Development Corporation for the sum of P2,260,000.00 *(Exhibit A)*. Under the terms of the Deed of Absolute Sale, it was provided that "all expenses incident to the registration of the sale and transfer of the title to the BUYER, including but not limited to the Capital Gains Tax on the sale of real property, documentary stamp tax, transfer tax and registration fees shall be borne and paid for by the BUYER" *(Exhibit A-2)*. On January 13, 1992, petitioner received a notice of assessment for surcharge and interest for the year 1990 arising from its alleged late payment of capital gains and documentary stamp taxes on the said transaction *(Annex C, Petition for Review; CTA Records, page 17)*.

On January 30, 1992, petitioner wrote the Commissioner of Internal Revenue requesting for a reconsideration of the said assessment *(Exhibit C)*. It is the position of the petitioner that there was no late filing and/or payment of capital gains and documentary stamp taxes since the actual signing of the Deed of Absolute Sale took place on July 12, 1990, the date of notarization and not on March 9, 1990, the date appearing on the first page of the document. Thus, it is not liable to pay any surcharge or interest therefor. Petitioner supplemented its letter request for reconsideration on February 17, 1992 *(Exhibit D)*. On April 3, 2001, petitioner received a final decision from the respondent dated March 28, 2001, denying its request for reconsideration *(CTA Records, pages 9-11)*. Hence, this petition.

In his Answer, respondent had this to say by way of Special and Affirmative Defenses:

1) He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;

2) The assessments in question were issued in accordance with law and pertinent regulations;

3) Under Section 51(C)(2)(b) of the Tax Code, as amended, the capital gains tax return shall be filed within thirty days following each sale or disposition;

4) While it is true that under RMC No. 80-89, it is provided that the date of notarization shall be prima facie considered as the date of consummation

of the contract of sale, this, however, presupposes a situation where only the date of notarization appears on the document. But where a date of execution appears, then that date shall prevail over the date of notarization. In the case at bar, the date of execution of the sale on March 9, 1990 prevails over the date of notarization on July 12, 1990;

5) Furthermore, Revenue Regulations No. 13-85 sets forth the period within which the capital gains tax return shall be filed and the corresponding tax due thereon be paid. Accordingly, the capital gains tax return shall be filed and paid within 30 days following the sale and disposition of real property considered as capital asset;

6) Under Section 200 of the Tax Code, as amended, the documentary stamp tax return shall be filed within ten days after the close of the month when the taxable document was made, signed, issued, accepted or transferred and the tax thereon shall be paid at the same time the aforesaid return is filed;

7) According to BIR Revenue Memorandum Circular 45-88, the phrase "at the time the transaction is done or the transaction had" means the date of execution or signing of the document. The time of execution is not extended to the time of notarization of the deed of sale as the subsequent (sic) of the Notary Public merely attests to the authenticity of the signatures of the parties to the deed of sale but does not concur (sic) validity or completion of the contract. Hence, the documentary stamp on the Deed of Sale should have been paid on March 9, 1990, the date of execution thereof; and

8) All presumptions are in favor of the correctness of tax assessments.

To bolster its case, petitioner offered documentary and testimonial evidence. Respondent, however, submitted this case for decision without presenting any evidence *(CTA Records, page 120)*.

The issues to be settled in this case are:

(1) Whether or not the date of notarization should be considered as the date of execution of the Deed of Absolute Sale;

(2) Whether or not the assessment for deficiency surcharge and interest for alleged late payment of capital gains tax in the amount of P28,250.00 and documentary stamp tax in the amount of P5,650.00 is valid.

Respondent avers that as per the evidence submitted by the petitioner itself, the Deed of Absolute Sale (Deed, for brevity) was executed on March 9, 1990. Inasmuch as the capital gains and documentary stamp taxes were paid only on July 12, 1990 in violation of Section 51(C)(2)(b) and Section 200 of the Tax Code, as amended, petitioner is liable for surcharge and interest for late payment thereof.

Petitioner contrarily argues that there was no late payment of capital gains and documentary stamp taxes because the subject Deed was actually signed and notarized on July 12, 1990 as borne out by the last page of the same document. Although the said Deed reflects the date of execution as March 9, 1990, the originally intended date of execution, the contract was consummated only on July 12, 1990 due to a disagreement between the parties as to who would assume liability for taxes, fees and other expenses. According to petitioner, the date appearing on the first page of the document does not reflect the actual date of signing and notarization which is on July 12, 1990 and the fact that it was not changed is a mere oversight on its part.

Under Section 44(c)(2)(ii) of the 1990 Tax Code, the capital gains tax return shall be filed within thirty (30) days following each sale or disposition. Relative thereto, Revenue Regulations No. 13-85 provides that the capital gains tax return shall be filed and paid within thirty days following the sale or disposition of real property considered as capital assets. On the other hand, Section 173 of the same Code mandates that the documentary stamp taxes shall be paid at the time the act is done or transaction had.

The present controversy arose when both the petitioner and respondent have differing views as to when the capital gains and the documentary stamp taxes became due and payable. According to the petitioner, the period should be counted from July 12, 1990, the date the contract of sale was consummated as evidenced by the notarization thereon. Respondent counters that the document was executed on March 9, 1990 as appearing on the first page of the contract itself. Therefore, the payment of the capital gains and documentary stamp taxes on July 12, 1990 was already beyond the period allowed by law. Accordingly, surcharge and interest thereon are proper.

We find against the petitioner.

As to whether or not the date of notarization should be considered as the date of execution of the Deed of Absolute Sale, the court rules in the negative. The document itself shows that the deed was executed on March 9, 1990 but belatedly notarized on July 12, 1990. If indeed the contract was consummated only on July 12, 1990 due to a disagreement between the parties as to who would assume liability for taxes, fees and other expenses, petitioner should have shown proof that the sale actually took place only on July 12, 1990, *i.e.* proof of payment on said date. No evidence, however, was shown to support petitioner's claim that the sale was consummated only July 12, 1990. Where on the face of the Deed it is clear that on March 9, 1990, the receipt of the sum of P2,260,000.00 was acknowledged by the seller, mere allegation that the date appearing on the first page of the document does not reflect the actual date of signing and notarization and the fact that it was not changed is a mere oversight on its part, without any corroborating evidence, cannot hold water. "No judge should ever decide a controverted question of fact without use of one or more of his five senses. The senses of hearing and sight are used in every case for more purposes than that of simply seeing the witnesses and hearing their words" ***(3 Jones on Evidence, 2^{nd} Ed., 2520, cited in Martin, Revised Rules on Evidence, Rules of Court in the Philippines, 1989 Ed., page 57)***. Physical evidence is evidence of the highest order. It speaks more eloquently than a 100 witnesses (***People vs. Simpongco, G.R. No. 42665, June 30, 1988, cited in Martin, Revised Rules on Evidence, Rules of Court in the Philippines, 1989 Ed., page 57***).

Petitioner argues that since the transaction involved a real contract, the same was perfected by constructive delivery that took place only on July 12, 1990. We do not agree. Notarization does not make a contract complete. "*The formal objection to the deed of sale is of no moment. We agree with the trial Judge that had not this instrument been notarized at all, the same would have been fully effective as between the parties under Article 1261 of the old Civil Code in force at the time of the conveyance. All the elements of a valid contract were present: subject matter, capacity and consent of the parties, and lawful consideration*" (**Soriano vs. Latono, 87 Phil. 757**). As correctly pointed out by respondent, although Revenue Memorandum Circular No. 80-89 provides that "the date of notarization appearing on the Deed of Sale shall be considered *prima facie* the date of consummation of the contract of sale," this presumption does not apply if there are other dates appearing on the document. Since it is clear from Section 44(c)(2)(ii) of the 1990 Tax Code that individuals subject to tax on capital gains from the sale or disposition of real property under Section 21(e) shall file a return within thirty days following each sale or other disposition, it follows that the capital gains tax should have been paid within thirty days from March 9, 1990, the date of sale as appears on the deed.

The same holds true with respect to the documentary stamp tax. Under Section 173 of the 1990 Tax Code:

> "Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, **and at the same time such act is done or transaction had: xxx"**

Furthermore, Revenue Memorandum Circular No. 45-88 provides, *viz*:

> "Documentary stamps should therefore be bought and/or affixed on the documents at the time such ACT IS DONE OR TRANSACTION HAD (meaning the date of execution or signing of the document). <u>The time of execution is not extended to the time of the notarization of the Deed of Sale as this subsequent act of the Notary Public merely attests to the authenticity of the signatures of the parties to a Deed of Sale but does not confer validity or completion to the contract</u>.
>
> The conclusion that the phrase "at the time such act is done or transaction had" should be construed to mean to be the same as the time when the Notary Public adds his jurat or acknowledgment to the document is therefore, not in place." *(Underscoring supplied)*

Clearly from the foregoing, the time of execution is not extended to the time of the notarization of the Deed of Sale. To repeat, the subsequent act of the Notary Public is not intended to stamp validity or completion to the contract.

Finding that the date of execution of the Deed of Sale was March 9, 1990, we therefore hold that there was late payment of the capital gains and documentary stamp taxes. Consequently, the assessment for deficiency surcharge and interest in the amounts of P28,250.00 and P5,650.00 for alleged late payment of capital gains tax and documentary stamp tax, respectively, is valid.

IN VIEW OF ALL THE FOREGOING, it is hereby recommended that the assessment for surcharge and interest in the total amount of P33,900.00 representing late payment of capital gains and documentary stamp taxes for the year 1990 be **UPHELD.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge