REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Respondent.

CTA EB No. 1384
(CTA Case No. 8473)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, *JJ.*

Promulgated:

SEP 21 2016 2:46 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner Commissioner of Internal Revenue, seeks to reverse and set aside the Decision[1] dated July 3, 2015 and the Resolution[2] dated October 14, 2015, respectively.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. Respondent is hereby **ORDERED** to (*i*) **CANCEL** the Formal Assessment

[1] Court Division Docket, Vol. 4, pp. 1593-1614.
[2] Court Division Docket, Vol. 4, pp. 1631-1635.

Notices (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111-E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively; *(ii)* **RETURN** to petitioner the amounts of Php4,052,125.00 and PhP1,215,645.00 representing its payment under protest on September 4, 2012 for basic deficiency Expanded Withholding Tax and Documentary Stamp Tax; and *(iii)* **ISSUE** the corresponding Certificates Authorizing Registration for the sale of properties.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, the "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The following are the antecedent facts[5] as found by the Court in Division:

"An undated Deed of Absolute Sale, notarized on January 24, 2011, was executed between petitioner (now respondent), as Vendor and EDC, as Vendee for the sale of three (3) parcels of land located in Fort Bonifacio Global City, Taguig City (hereinafter referred to as the 'sale of properties'), in the total amount of Thirty Million One Hundred Seventy-Two Thousand Five Hundred Pesos (PhP30,172,500.00).

To effect transfer of title, on February 7, 2011, petitioner filed a letter addressed to the BIR Revenue District Officer of Revenue

[3] See Note 1, pp. 1613-1614.
[4] See Note 2, p. 1635.
[5] See Note 1, The Facts, pp. 1595-1602.

District Office ('RDO') No. 44, Ms. Maridur V. Rosario, requesting for the issuance of the CARs on the sale of properties.

On June 6, 2011, petitioner received a reply from respondent (now petitioner) through Ms. Rosario imposing the assailed taxes *i.e.* Expanded Withholding Tax ('EWT') and Documentary Stamp Tax ('DST'), as provided in Sections 27(C) and 196 of the 1997 National Internal Revenue Code, as amended ('Tax Code').

On June 14, 2011, petitioner received a Preliminary Assessment Notice ('PAN') from the BIR Assessment Division, BIR Revenue Region 8, Makati City, for the alleged deficiency EWT and DST including penalties on the sale of properties in the total amount of Five Million Three Hundred Seventeen Thousand Seven Hundred Seventy Pesos (PhP5,317,770.00), exclusive of 25% surcharge and interest, broken down as follows:

xxx xxx xxx

In reply, petitioner filed a formal protest on the PAN in accordance with Section 3.1.2 of the Revenue Regulations ('RR') No. 12-99 on June 23, 2011.

On August 25, 2011, petitioner received a Formal Assessment Notice ('FAN'), holding it liable to pay a deficiency EWT and DST on the sale of properties, along with compromise penalties for violations of Section 58 of RR No. 2-98 and Section 200 of the Tax Code, as shown below:

xxx xxx xxx

On September 19, 2011, pursuant to Section 3.1.5 of RR No. 12-99, petitioner filed a formal protest letter on the FAN (hereinafter referred to as the 'Protest Letter'), which asserts that the proceeds from the disposition or sale of its properties are exempt from all forms of taxes and fees, as provided in Section 8(d) of its Charter.

On October 20, 2011, petitioner received a letter from the Regional Director of Revenue Region No. 8, Mr. Nestor S. Valeroso, which acknowledged receipt of the Protest Letter; declared that the entire docket together with the Protest Letter will be forwarded to RDO No. 44; and requested for the submission of all the necessary documents to support petitioner's claim to the said RDO within sixty

(60) days from the date of filing of the protest pursuant to Section 3.1.5 of RR No. 12-99.

Due to the inaction of respondent on the Protest Letter and in accordance with Section 228 of the Tax Code, petitioner, on April 16, 2012, filed the present Petition for Review with the Court.

On June 25, 2012, respondent filed her Answer through registered mail, interposing the following Special and Affirmative Defenses:

'xxx xxx xxx

5. Section 228 of the . . . Tax Code partly reads as follows:

xxx xxx xxx

Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999, provides that [the] taxpayer shall submit the required documents in support of its protest within sixty (60) days from the date of filing of the protest, otherwise, the assessment shall become final and executor[y], and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation. In the instant case, despite the length of time given to herein petitioner, it failed to submit the required documents in support of its protest against the BIR Formal Assessment. Consequently, the same became final, executor[y] and demandable. As such, this Honorable Court has no jurisdiction to act o[n] the instant petition.

6. Further, Section 228 of the [Tax Code], as implemented by Revenue Regulation 12-99 subjects [the] transfer [of] real property by and between BCDA and Energy Development Corp. (EDC) to Expanded Withholding Tax and Documentary Stamp Tax.

7. Further yet, Section 27 (C) of the [Tax Code] states that 'The provisions of existing special or general laws to the contrary notwithstanding, all corporation, 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 Amusement Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as imposed by this Section upon corporations or associations engaged in similar business, industry or activity xxx.' Clearly, BCDA is not one of those government entities exempt from tax on their taxable business activities.

8. In a Letter dated July 25, 2011, it was mentioned that 'officials of BCDA had a meeting with Deputy Commissioner Sales together with our Revenue District Officer and Assistant Revenue District Officer to discuss the case and that both parties agreed that a Formal Assessment Notice be issued to cover the deficiency taxes on the basis of Section 27(C) of the Tax Code xxx'.

9. The Deed of Absolute Sale Between BCDA and EDC executed on January 24, 2011 particularly sub-section 1.2 under Section 1 (Responsibility of the Parties) provides that 'the Vendor shall be responsible for, and shall pay, all costs and expenses incurred for, the transfer of the subject properties, including those for the processing of documents and coordination with the government agencies. Likewise, all taxes arising from the transfer and sale of the subject properties shall be for the account of, and shall be paid by, the VENDOR.' Otherwise stated, this provision is a tacit admission of taxability of the subject transfer.

10. In paragraph 40 of the Petition, the petitioner has even boldly cited Section 173 of the [Tax Code] which provides that 'whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not tax exempt shall be the one directly liable for the tax.' However, the subject sub-section 1.2 in the Deed of Absolute Sale Between BCDA and EDC executed in January 24, 2011, even made with the approval of the Office of the Government Corporate Counsel, attempts to prohibit the BIR from enforcing its duties. xxx

xxx xxx xxx"

Resolute to complete the transfer of title to EDC, on September 4, 2012, petitioner paid under protest the alleged 'basic' deficiency taxes *i.e.* EWT and DST in the total amount of PhP5,267,770.00 that upon payment, the corresponding CARs shall be released by respondent.

On September 6, 2012, petitioner filed a letter with RDO No. 49 informing the latter of its payment on September 4, 2012 and requesting for the issuance of the CARs in connection with the sale of properties, which are required for the registration of the same in the name of EDC. As proof of said payments, petitioner provided the BIR Form No. 0605 – Payment Forms, the disbursement vouchers, the requests for payment slips, and the BTR-BIR Deposit/Payment Slips.

Petitioner likewise filed a letter dated April 30, 2012 with the CIR through Ms. Rosario, stamped received on September 6, 2012, apprising the latter on the status of petitioner's protest of the FAN with the Court; the necessity of the CARs issuance for the registration of the properties in the name of EDC; and the payment of the basic deficiency taxes *i.e.*, EWT and DST on September 4, 2012. In the same letter, petitioner requested approval of the abatement of penalties and interest on the EWT and DST, and thus attached BIR Form No. 2110 – Application for Abatement or Cancellation of Tax, Penalties and/or Interest under RR No. 13-2001.

Petitioner and respondent filed their respective Pre-trial Briefs on July 20, 2012 and July 30, 2012.

On October 17, 2012, the parties filed their Joint Stipulation of Facts, and thus a Pre-Trial Order was issued on November 13, 2012. The stipulated issues in the Pre-Trial Order are: (*i*) whether or not BCDA is liable to pay EWT and DST on the sale of its real properties located at Fort Bonifacio, Bonifacio Global City; and (*ii*) whether or not BCDA is entitled to a refund for the payment it made under protest on September 4, 2012 of PhP5,267,770.00 representing the basic deficiency taxes for EWT and DST.

On May 22, 2013, petitioner filed its Formal Offer of Documentary Exhibits, which was resolved by the Court in its Resolutions dated July 1, 2013 and September 5, 2013. Petitioner also filed another Formal Offer of Documentary exhibits on October 4, 2013, which was resolved by the Court in November 20, 2013.

On March 3, 2014, respondent filed her Formal Offer of Evidence, which was resolved by the Court in its April 22, 2014 Resolution, which likewise ordered the parties to file their respective memoranda.

In compliance to the Resolution, petitioner and respondent then filed their respective Memoranda on May 26, 2014 and June 23, 2014 through registered mail.

Thus, on July 3, 2014, the Court promulgated a Resolution submitting the case for Decision."

On July 3, 2015, the Court in Division rendered the assailed Decision. On July 16, 2015, petitioner filed his Motion for Reconsideration,[6] which was denied by the Court in Division in the assailed Resolution dated October 14, 2015. On November 12, 2015, petitioner filed the instant Petition for Review.[7]

Petitioner challenges the assailed Decision and Resolution, respectively, on the following grounds: (1) Respondent's payment of deficiency EWT and DST renders the subject assessments final and executory; (2) Respondent failed to submit supporting documents; (3) The Court in Division should not have granted a relief not prayed for by respondent in the proceedings *a quo*, *i.e.*, tax refund, without an amendment of the Petition filed before the Court in Division; and (4) The transfer of real property between respondent and EDC is subject to EWT and DST.

Respondent counters that it paid the subject taxes under protest; that it submitted the supporting documents; that an amendment of the Petition before the Court in Division is not necessary to include the relief of tax refund; and that respondent is exempt from payment of all forms of taxes.

On March 14, 2016, the Court required the parties to submit their memoranda.[8] On May 24, 2016, respondent filed its Memorandum,[9] while petitioner failed to file the same. On June 24, 2016,[10] the case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

The Court is tasked to resolve the following issues: *Je*

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[6] Court Division Docket, Vol. 4, pp. 1615-1621.
[7] Court *En Banc* Docket, pp. 5-12.
[8] Court *En Banc* Docket, pp. 82-83.
[9] Court *En Banc* Docket, pp. 89-114.
[10] Court *En Banc* Docket, pp. 117-118.

1. Whether the assessments became final and executory upon payment by respondent of the subject taxes.

2. Whether the assessments became final and executory due to the alleged failure of respondent to submit supporting documents.

3. Whether tax refund may be granted albeit not being prayed for in the Petition for Review and *sans* amendment thereof before the Court in Division.

4. Whether the sale of real property by respondent to EDC is subject to EWT and DST.

THE RULING

We partially grant the instant Petition.

Payment made by respondent is without prejudice to the Petition for Review filed before the Court in Division

As found by the Court in Division, respondent received the FAN on August 25, 2011. On September 19, 2011, respondent filed the protest and on April 16, 2012, respondent filed the Petition for Review before the Court in Division due to petitioner's inaction over the protest. Meanwhile, on September 4, 2012 or during the pendency of the action before the Court in Division, respondent paid the total amount of P5,267,770.00 representing basic EWT and DST. On September 6, 2012, respondent sent a request for abatement of penalties and interest in relation to its EWT and DST so that CARs may already be issued involving the subject transaction. Respondent's letter pertinently provides:

> "Pending the decision of the CTA, BCDA paid the amount of Php5,267,770.00 representing the basic tax for the Expanded Withholding Tax and Documentary Stamp Tax for BIR to issue the CARs required for the transfer of title from BCDA to EDC.
>
> In view of the foregoing, may we request approval of the abatement of penalties and interest on the EWT and DST to enable RDO 44 to finally issue the CARs for the three (3) parcels of land subject of DOAS with EDC. **This is without prejudice to our position as pleaded in our Petition for**

Review filed with the Court of Tax Appeals."[11] *(Emphasis supplied)*

Respondent's payment of the subject taxes, therefore, is without prejudice to the Petition filed before the Court in Division. In other words, respondent's payment was made with a view that the BIR may issue the CARs in relation to its transaction with EDC, and not to settle the said tax liabilities. As such, the deficiency EWT and DST assessments did not become final and executory by reason of respondent's payment, as it made a reservation in its September 6, 2012 letter.

Time and again, the Court has consistently ruled that it is the taxpayer who determines what type of document it should submit to support its legal basis in disputing a tax assessment

Petitioner argues that considering the failure of respondent to submit the required documents, the subject assessments became final and executory. This argument is bereft of merit.

Time and again, this Court has consistently adopted the pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. First Philippine Express Pawnshop Company, Inc.*,[12] that the phrase *relevant supporting documents* pertains to those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

As found by the Court in Division, the relevant supporting documents were attached to the protest.[13] Hence, respondent submitted the relevant documents to support its case.

The Court in Division may grant the relief of tax refund albeit the action being an appeal involving the inaction of petitioner on disputed assessments

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[11] Exhibit "U", Court Division Docket, Vol. 2, p. 1009.
[12] G.R. No. 172045-46, June 16, 2009 (589 SCRA 275).
[13] See Note 1, p. 1607.

Petitioner argues that respondent should have filed an amended or supplemental Petition for Review before the Court in Division may grant a relief not prayed for in the Petition, *i.e.*, tax refund.

In the old case of *Roman Catholic Archbishop of Cebu v. The Collector of Internal Revenue*,[14] petitioner therein filed a Petition for Review involving a disputed assessment which it already paid under protest. One of the defenses raised by respondent is that petitioner failed to file a claim for refund which is mandatory and a condition precedent to an action for the recovery of taxes paid. In rejecting respondent's argument, the Supreme Court said that:

> "We agree with petitioner that Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, in providing for appeals from —
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> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue;
>
> allows an appeal from a decision of the Collector in cases involving "disputed assessments" as distinguished from cases involving "refunds of internal revenue taxes, fees or other charges, ...", that the present action involves a disputed assessment", because from the time petitioner received Assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court a quo, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under Section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner)

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[14] G.R. No. L-16683, January 31, 1962.

> would certainly disallowed the claim for refund in the same way as he disallowed the protest against the assessment. The law should not be interpreted as to result in absurdities."

While the *Roman Catholic* case is not on all fours with the present case, *We* find that the Court in Division may grant a tax refund relief albeit not being prayed for in the Petition for Review. As in the *Roman Catholic* case, respondent need not go through a useless and needless ceremony that would only delay the disposition of the instant case. Thus, although the action before the Court in Division is an appeal over the inaction of petitioner on the disputed assessments, the payment of the alleged deficiency taxes pending action will necessarily include the adjudication of the issue on tax refund which is ultimately germane, related or intertwined to the issue on the disputed assessments.

We further agree with respondent that, following the ruling of the Supreme Court in *Philippine National Bank v. Spouses Enrique Manalo*,[15] judgment may be rendered not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. Consequently, the court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended.[16]

Considering the foregoing, the Court in Division is empowered to grant the said tax refund relief.

Respondent is exempt from payment of EWT and DST by virtue of its charter. However, it is liable to pay DST under its contract with EDC which has the force and effect of law.

Finally, the Court shall determine whether respondent is subject to the payment of EWT and DST.

The Court in Division extensively discussed in the assailed Decision the history of respondent's charter in relation to the Tax Code. Consequently, the Court in Division pronounced that:

> "It is apparent from the foregoing that Congress did not make petitioner itself a tax exempt entity. It however clearly

[15] G.R. No. 174433, February 24, 2014.
[16] Id.

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.

From the foregoing discussion, PD No. 1158, RA Nos. 8424 and 9337 (collectively referred to as the 'Tax Code') refer in general to the taxability of government owned or controlled corporations, agencies or instrumentalities. While the BCDA Charter specifically governs petitioner's proceeds from the sale of portions of Metro Manila military camps.

In the recent case of *Commissioner of Internal Revenue vs. BCDA*, the CTA *En Banc* had the occasion to rule that between the BCDA Charter, on one hand, which is a special law governing the BCDA, which took effect in 1995; and the Tax Code, on the other hand, which is the general law on national internal revenue taxes, that took effect on January 1, 1998, the former prevails.

It is a well-established rule of statutory construction that a special law prevails over a general law regardless of their dates of enactment; and the special law is to be considered as remaining an exception to the general law.

Therefore, the BCDA charter which exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, *i.e.*, EWT and DST governs.

Likewise, in the case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, the Supreme Court settled the issue of exemption from all forms of taxes that arises from the proceeds of petitioner's sale of properties in Metro Manila military camps.

Thus, from the foregoing discussion, it is established that the proceeds of the sale of petitioner's properties in Metro Manila military camps are exempt from all forms of taxes."[17]

We agree with the Court in Division that respondent is exempt from payment of all forms of taxes relative to the proceeds from its sale of portions of the Metro Manila military camps, including the payment of EWT and DST, pursuant to its charter.

However, with respect to the payment of DST, the *proviso* of Section 173 of the Tax Code provides:

[17] See Note 1, pp. 1612-1613.

> "**SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.** – xxx
>
> xxx *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax."

In relation to the above-quoted provision, it is significant that Section 1.2 of the Deed of Absolute Sale[18] between respondent and EDC provides:

> "1.2 The VENDOR shall be responsible for, and shall pay, all costs and expenses incurred for, the transfer of the Subject Properties, including those for the processing of documents and coordination with the government agencies. Likewise, **all taxes arising from the transfer and sale of the Subject Properties shall be for the account of, and shall be paid by, the VENDOR**.
>
> The VENDOR and the VENDEE shall make representations with the Bureau of Internal Revenue and the Local Government of Taguig to seek exemption from the payment of taxes resulting from the transfer and sale of the Subject Properties. **However, this shall not alter the VENDOR's responsibility for these taxes**."*(Emphasis supplied)*

An analysis of respondent's charter in relation to Section 1.2 of the Deed of Absolute Sale between respondent and EDC shows that, despite respondent being exempt from payment of all forms of taxes under its charter, it expressly assumed liability over all taxes arising from the transfer and sale of the Subject Properties under its contract with EDC.

Necessarily, respondent's rights and obligations emanate not only from its charter or the Tax Code, but also from its contract with EDC to which it expressly agreed.

On this score, Section 229 of the Tax Code provides:

> "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

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[18] Exhibit "A", Court Division Docket, Vol. 2, p. 816.

> 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." *(Emphasis supplied)*

Section 229 of the Tax Code allows the refund of taxes erroneously or illegally assessed or collected, or those which were collected without authority, or taxes which have been excessively or in any manner wrongfully collected. From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[19]

As stated earlier, respondent is exempt from payment of all forms of taxes under its charter, which include the payment of EWT and DST. Thus, there is no controversy over respondent's non-liability to pay EWT by express provision of its charter. On the other hand, a reading of respondent's charter in relation to Section 173 of the Tax Code reveals that, considering that respondent is exempt from payment of DST, it is EDC who is directly liable to pay the DST.

However, while EDC is the entity directly liable to pay the tax, respondent expressly assumed EDC's liability to pay the corresponding taxes under Section 1.2 of their contract. Thus, respondent's obligation to pay EDC's tax liability arose through its own action, by consenting to assume the tax liabilities arising from the contract.

Therefore, it will logically follow that there is no wrongful payment on the part of respondent with respect to DST. Respondent knows fully well its rights under its own charter, *i.e.*, that it is exempt from payment of all forms of taxes. Yet, for reasons known only to the parties, respondent gave its express and willful consent under the contract to pay the DST that EDC should have been directly liable to pay under Section 173 of the Tax Code. Hence, where there is no wrongful payment, there is no wrongfully collected tax that may be the subject of a tax refund.

To clarify, respondent has no obligation to pay EWT and DST on the proceeds from its sale of portions of Metro Manila military camps, pursuant to its charter. However, it is equally important to apply the elementary principle that obligations arising from contracts have the force of law

[19] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.[20] By expressly assuming the liability of EDC to pay the taxes attributable to the latter, *i.e.*, DST by virtue of Section 173 of the Tax Code, it incurred a contractual obligation to pay the DST to which it would otherwise be exempt under its charter.

As a consequence, the Court has no jurisdiction to grant a relief for tax refund with respect to DST covering the subject transaction, the source of the obligation being contractual or civil in nature and hence, should be litigated in a proper forum.

Finally, respondent already paid the basic deficiency DST in the amount of P1,215,645.00 which cannot be recovered by respondent in this forum, as discussed above. However, with respect to the corresponding surcharge and interest, *We* rule that the same cannot be imposed upon respondent because by virtue of Section 173 of the Tax Code in relation to respondent's charter, respondent only assumed the contractual liability to pay the DST to which EDC is directly liable. However, its charter exempts it from payment of all forms of taxes, which necessarily includes the payment of the said surcharge and interest imposable under the Tax Code.

All told, the partial grant of the instant Petition for Review is in order.

WHEREFORE, in view thereof, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Decision dated July 3, 2015 is modified, as follows:

> "**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to:
>
> *(i)* **CANCEL** the Formal Assessment Notices (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111-E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively;

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[20] *Rodolfo Morla v. Corazon Nisperos Belmonte, et al.*, G.R. No. 171146, December 7, 2011.

(ii) **RETURN** to petitioner the amount of Php4,052,125.00 representing its payment under protest on September 4, 2012 for basic deficiency Expanded Withholding Tax; and

(iii) **ISSUE** the corresponding Certificates Authorizing Registration for the sale of properties."

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1384** (CTA Case No. 8473)
	Present: **DEL ROSARIO**, *PJ*, **CASTAÑEDA, JR.**, **BAUTISTA**,
-versus-	**UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, *and* **RINGPIS-LIBAN**, *JJ.*
BASES CONVERSION AND DEVELOPMENT AUTHORITY, *Respondent.*	Promulgated: SEP 21 2016 2:46 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* which partially grants the Petition for Review filed by the Commissioner of Internal Revenue (CIR). I take exception, however, to the following conclusions:

1. The Court has no jurisdiction to grant the relief of tax refund with respect to the Documentary Stamp Tax (DST) covering the sale of the properties of the Bases Conversion and Development Authority (BCDA) consisting of three (3) parcels of land to Energy Development Corporation (EDC), **the source of the obligation being contractual or civil in nature, hence, should be litigated in a proper forum**; and,

2. With respect to the corresponding surcharge and interest on the DST, the same cannot be imposed upon BCDA by virtue of Section 173 of the Tax Code in relation to its

charter as BCDA only assumed the contractual liability to pay the DST, which is the direct liability of EDC.

Anent the relief of tax refund prayed for with respect to the DST, I am of the view that the Court *En Banc* has jurisdiction to rule on whether the BIR should be ordered to refund the DST paid by BCDA. I submit that the basis for the grant or denial of the refund is not purely contractual or civil in nature, BCDA's action having been instituted against the BIR and not against EDC with whom it entered into a Contract. In determining whether BCDA is entitled to refund or not, the Court *En Banc* is called upon to apply the provisions of Section 173 and 196 of the Tax Code *vis-à-vis* the provision in the Contract between BCDA and EDC whereby BCDA expressly assumed the responsibility to pay corresponding taxes under Section 2.1 thereof. Otherwise stated, this Court is vested with jurisdiction to resolve the issue concerning the validity of the deficiency DST assessment issued against BCDA and its entitlement to refund of the DST paid under protest, pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The grant of the relief of refund in an assessment case is not novel. In *Dr. Felisa L. Vda. De Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin v. Commissioner of Internal Revenue*,[1] an assessment case for deficiency estate tax including surcharge, interest and penalties, the Supreme Court upheld the Court of Tax Appeals' decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer.

With regard to the **surcharge** due on the DST, the same may be imposed upon BCDA by virtue of its categorical assumption of the obligation to pay the DST due on the transaction, which necessarily includes the payment of the additional impositions to the DST in the event there is failure to pay the DST on time. In this instance, the obligation to pay the DST may be deemed as BCDA's principal obligation; the payment of the additional imposition thereon, for failure to pay on time, is a necessary consequence of its assumption of the responsibility to pay the DST which is merely accessory to the principal obligation.

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[1] G.R. No. 138485, September 10, 2001.

Deficiency interest may not, however, be imposed on the DST due as deficiency interest may only be imposed on tax specifically covered and defined by the relevant provisions of the National Internal Revenue Code (NIRC), *i.e.*, income tax, donor's tax and estate tax.[2]

In fine, I vote to PARTIALLY GRANT the Petition for Review filed by the CIR. Accordingly, the assailed Decision and Resolution promulgated on July 3, 2015 and on October 14, 2015 respectively, should be AFFIRMED with MODIFICATIONS:

1. The CIR should be ORDERED to: (i) CANCEL the assessment for EWT including penalty and surcharge; (ii) REFUND to BCDA the EWT paid in the amount of P4,052,125.00; and (iii) ISSUE the corresponding Certificates Authorizing Registration for the sale of BCDA's properties after payment of surchage due on the late payment of DST by BCDA; and

2. The assessment for DST inclusive of surcharge should be SUSTAINED; however, considering that BCDA has already paid the *basic* DST, BCDA should still be ORDERED to pay the *surcharge* due thereon.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] See my *Concurring and Dissenting Opinion* in Lourdes College vs. Commissioner of Internal Revenue, CTA EB No. 1164, July 28, 2016.