REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE SECRETARY OF FINANCE,
Petitioner,

CTA EB NO. 1776
(CTA Case No. 9145)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

CENTURY PEAK PROPERTY DEVELOPMENT, INC. and KINGSVILLE INTERNATIONAL RESOURCES, INC.,
Respondents.

Promulgated:

DEC 19 2019
1:33 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On July 5, 2019, the Court *En Banc* promulgated a Decision,[1] the disposing the case as follows:

> **WHEREFORE**, the instant *Petition for Review* filed by The Secretary of Finance on February 15, 2018 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated July 24, 2017 and January 15, 2018, respectively, are **AFFIRMED.**
>
> **SO ORDERED.**

[1] *En Banc* docket, pp. 214-228.

In the said Decision, the Court *En Banc* sustained the ruling of the Court in Division to reverse and set aside the: (1) Certification Ruling SN. 014-2012 issued by the Bureau of Internal Revenue (BIR), stating that the transfer of the properties by and between respondents Kingsville International Resources, Inc. and Century Peak Property Development, Inc. is not subject to income tax, capital gains tax, expanded withholding tax, and donor's tax but subject to documentary stamp tax and value-added tax in the amount of Php5,416,164.00; and (2) Resolution dated July 14, 2015 issued by the Department of Finance, affirming the said BIR Certification.

Unyielding, petitioner filed the instant *Motion for Reconsideration* [2], insisting that the subject Deed of Assignment is a clear transfer of property by and between the respondents, and deemed as a "sale, barter or exchange of goods or properties" subject to value-added tax (VAT).

In support of his position, petitioner claims that: (a) respondent Kingsville is a corporation engaged in real estate business; (b) its real properties are held primarily in the course of its trade or business; (c) its secondary purposes traverse all other conduct, pursuit and activity incidental and related to real estate business; (d) respondent Kingsville bought shares from respondent Century Peak; (e) these shares constituted almost half or majority of the shares of respondent Century Peak; (f) these shares were paid by respondent Kingsville with the subject two parcels of land; (g) respondent Century Peak was also incorporated as a real estate business; and (h) logic and common sense dictate that respondent Kingsville would not invest its properties if the same is not in the course or in pursuit of its trade or business as stated in its Articles of Incorporation. Hence, the subject Deed of Assignment entered into by and between respondents is subject to VAT.

Petitioner further submits that the assailed Decision even suggests that buying out stocks of another company, either in cash or in property, is a VAT exempt transaction even if it is in the nature of a sale, barter or exchange of

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[2] *En Banc* docket, pp. 229-244.

goods or properties held in the course of its trade or business.

Finally, in siding with respondents' position that the subject Deed of Assignment was in the concept of a pre-incorporation subscription agreement thus, not included in the enumeration of transactions deemed sale under Section 106(B) of the NIRC, the Court might have missed the point that such pre-incorporation subscription agreement was likewise not included in the enumeration of VAT-exempt transactions under Section 109 of the NIRC.

In their *Comments and Objections* respondents argue that petitioner's *motion* failed to raise new issue, hence, should be denied outright.

Respondents contend that Section 106 of the NIRC of 1997, as amended, contemplates VAT as tax on consumption, particularly sale, barter or exchange of goods or properties. To be subject to VAT, transactions should fall under the definition or nature of sale. Even Section 109 of the Tax Code enumerates exempt transactions in the nature of sale or consumption. In short, only those specifically mentioned under Section 106(B) of the NIRC of 1997 are transactions deemed sale that are subject to VAT.

In the instant case, the Deed of Assignment of the two (2) parcels of land was pre-incorporation subscription contract pursuant to Section 61 and 62 of the Corporation Code. As capital investment, respondent Kingsville used the two (2) parcels of land as consideration of its original subscription and contribution to the paid-up capital of the corporation-still-to-be-formed, namely, Century Peak. And due to the subscription of 450,000 common shares in the capital stock of respondent Century Peak, respondent Kingsville became a corporate stockholder holding 90% of the total capital stock of the newly incorporated respondent Century Peak.

Invoking the ruling in *Delpher Trades Corporation et. al., vs. Intermediate Appellate Court,*[3] respondents submit

[3] G.R. No. L-69259, January 26, 1988.

that the Deed of Assignment cannot be considered a contract of sale subject to VAT. Respondent Kingsville merely changed its ownership from one form to another. The ownership remained in the same hands.

Lastly, respondents contend that the Deed of Assignment is considered as a tax-free exchange under Section 40(C)(2) of the NIRC of 1997, as amended, where no gain and loss is recognized as the transferor of the subject properties becomes the controlling stockholder of the corporation.

In his *Reply,* petitioner counters that the purpose of a motion for reconsideration is to point out the findings and conclusions in the decision which, in movant's view, are not supported by law or evidence. It is for this reason that the movant is often confined to the amplification or further discussion of the same issues already passed upon by the court as in this present incident. Otherwise, the remedy would not be a reconsideration of the decision but a new trial or some other remedy.[4]

According to petitioner, respondents' invocation of non-applicability of VAT in the subject Deed of Assignment is not a claim for tax exemption is misleading. Obviously, respondent failed to consider that a claim for non-applicability of VAT to the subject Deed of Assignment represents a loss of revenue to the government.

In closing, petitioner insists that although no money was involved in the transaction between respondents, delivery of 450,000 shares of respondent Century Peak in exchange for two (2) parcels of land of respondent Kingsville was actually a sale.

In their *Rejoinder*, respondents emphasize that tax cannot be imposed without clear and express words for that purpose. Moreover, the taxing authority must first prove that such tax is imposed since there is no imposition by implication. In case of doubt, the law should be construed against the imposition of taxes and in favor of the taxpayer.

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[4] *Siy vs. Court of Appeals*, 138 SCRA 536 (1985).

After going over the parties' contentions in their respective pleadings, the Court finds no cogent reason to deviate from its ruling in the assailed Decision of July 5, 2019. The motion has not raised any new or substantial ground to justify a departure from the previous finding and conclusion of the Court. To be sure, all the arguments raised by petitioner had already been passed upon, amply discussed, and considered, first by the Court in Division and subsequently on appeal, by the Court *En Banc*.

To repeat, petitioner by his own words merely presumed that the two parcels of land owned by respondent Kingsville were held for sale or use in the course of business simply because it is a real estate dealer. The ruling in the case of *Delpher Trades Corporation and Delfin Pacheco vs. Intermediate Appellate Court and Hydro Pipes Philippines, Inc.,*[5] is instructive, thus:

> After incorporation, one becomes a stockholder of a corporation by subscription or by purchasing stock directly from the corporation or from individual owners thereof (*Salmon, Dexter & Co. v. Unson, 47 Phil. 649, citing Bole v. Fulton [1912], 233 Pa., 609*). In the case at bar, in exchange for their properties, the Pachecos acquired 2,500 original unissued no par value shares of stocks of the Delpher Trades Corporation. Consequently, the Pachecos became stockholders of the corporation by subscription. **'The essence of the stock subscription is an agreement to take and pay for original unissued shares of a corporation, formed or to be formed.'** (*Rohrlich 243, cited in Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1980 Edition, p. 430*) It is significant that the Pachecos took no par value shares in exchange for their properties.
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> xxx xxx xxx

[5] Supra, Note 3.

> **The 'Deed of Exchange' of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale. There was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another. The ownership remained in the same hands**. (Boldfacing supplied)

Considering that the subject Deed of Assignment is in the nature of pre-incorporation subscription pursuant to Sections 61 and 62 of the Corporation Code of the Philippines, the same **cannot be deemed as sale**. As such, the transfer of the two (2) parcels of land as pre-incorporation subscription is not a disposition or exchange of properties that is subject to VAT.

WHEREFORE, petitioner's Motion for Reconsideration filed on July 26, 2019 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice