REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CAPITOL STEEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9240

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 07 2018 4:22 pm

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RESOLUTION

CASANOVA, *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 26 October 2017)**, filed on November 10, 2017, with petitioner's **Comment (On "Motion for Partial Reconsideration" dated 10 November 2017)**, filed through registered mail on December 4, 2017 and received by the Court on December 11, 2017.

Respondent moves for the reconsideration of the Decision promulgated on October 26, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent's Revised Final Decision on Disputed Assessment imposing upon petitioner capital gains tax in the amount of

₱18,407,314.17 and documentary stamp tax (DST) in the amount of ₱4,639,238.01, is **CANCELLED**.

SO ORDERED."

Respondent claims that the assessment has attained finality by operation of law. He asserts that from receipt of Final Decision on Disputed Assessment (FDDA) on June 3, 2015, petitioner had the option to either appeal before this Court or elevate his protest to the Commissioner within thirty (30) days. He alleges that petitioner's request for reconsideration with the same Assistant Commissioner was not sanctioned by the rules. Hence, the thirty (30)-day period to file an appeal before this Court continued to run and accordingly, the assessment has attained finality by operation of law.

Petitioner counters that the time of appeal should be counted from the receipt of the Revised FDDA (and not the FDDA) signed by the OIC – Assistant Commissioner. Furthermore, it contends that the expropriation is still pending and that the final valuation of the just compensation for the property has not yet been decided by the Court. Thus, there is no occasion yet for the imposition of capital gains tax and Documentary Stamp Tax (DST). Finally, petitioner alleges that this Court made no determination of just compensation but merely an exposition of its legal meaning in relation to the issues of this case – an erroneous and premature assessment.

The Court does not agree with respondent.

It is worthy to note that the original FDDA signed by Officer-In Charge (OIC)-Assistant Commissioner had already been superseded by the subsequent issuance of the Revised FDDA by the same OIC-Assistant Commissioner. Thus, it is the Revised FDDA which is considered to be the decision of the Commissioner's duly authorized representative which may either be: appealed to this Court or protested through request for reconsideration to the Commissioner, both within thirty (30) days from date of receipt of the Revised FDDA. In this regard, when petitioner received the Revised FDDA assessing it for capital gains tax in the amount of ₱18,407,314.17 and DST in the amount of ₱4,639,238.01 on December 15, 2015, it has thirty (30) days from December 15, 2015 or until January 14, 2016 within which to file Petition for Review to this Court or (b) request for reconsideration to the Commissioner.

Given that the present Petition for Review was filed on January 14, 2016, the filing thereof is well within the thirty (30)-day reglementary period provided in Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.5 of RR No. 12-99. Accordingly, the tax assessment cannot be considered as final, executory and demandable.

Respondent further contends that petitioner is liable for the assessed capital gains tax and DST. He argues that there was conveyance of real property in favor of Phividec Industrial Authority. He states that the possession and title had already been transferred in favor Phividec Industrial Authority and that the latter had paid for the property based on the zonal value in the amount of ₱116,563,500.00.

Respondent's argument has no merit.

It must be stressed that the transfer of property through expropriation proceedings and the payment of just compensation are necessary elements of "sale" or "exchange" for purposes of Sections 24(D) and 56(A) (3) of the National Internal Revenue Code (NIRC) of 1997, as amended. Both elements must be present in order to be considered "sale" and be subjected to the imposition of capital gains tax and DST.

In the instant case, the Bureau of Internal Revenue (BIR) assessed petitioner of capital gains tax on the ₱116,563,500.00 paid by Phividec Industrial Authority pursuant to Section 4 of Republic Act (R.A.) No. 8974 for the expropriation of petitioner's property located in the Municipality of Tagoloan, Misamis Oriental.

The question is whether the amount of ₱116,563,500.00 constitutes just compensation and may therefore serve as the basis for the imposition of capital gains tax and DST.

The Court clarified that the <u>payment of the provisional value</u> as a prerequisite to the issuance of a writ of possession differs from the <u>payment of just compensation</u> for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. Zonal valuation is just one of the indices of the fair market value of the real estate. By itself, this index cannot be the sole basis of just compensation in expropriation cases.[1]

Thus, the amount of ₱116,563,500.00 based on zonal valuation paid by Phividec Industrial Authority pursuant to Section 4 of Republic Act (R.A.) No. 8974 was merely a payment of the provisional value as a prerequisite to the issuance of a writ of possession and not to be considered a payment of just compensation. In fact, the Regional of Trial Court (RTC) of Misamis Oriental, Branch 20 certified that the final valuation of the just compensation for the property involved in this case has not yet been decided by the Court. Therefore, the payment of just compensation has not been received by petitioner.

As such, without payment of just compensation, title remains with petitioner. The expropriation process, therefore, is not yet complete and terminated. Thus, there is yet no sale upon which the capital gains and DST may be imposed.

Lastly, respondent claims that the determination of just compensation is not within the functions of this Court.

Respondent's contention lacks basis.

A reading of the assailed Decision reveals that this Court did not make such a determination of just compensation that is to be paid to petitioner. It merely discussed the legal definition of just compensation in relation to payment of provisional value of the property in order to determine whether there was a sale upon which the capital gains and DST may be imposed. Apparently, respondent failed to take note that this Court even recognized the fact that the final valuation of the just compensation for the property involved in this case is still pending and has not yet been decided by the RTC of Misamis Oriental.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 26 October 2017)**, is **DENIED** for lack of merit.

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[1] As held by the Supreme Court in the case of *Capitol Steel Corp. vs. Phividec Industrial Authority*, G.R. No. 169453, December 6, 2006; cited in the assailed Decision, docket, pp. 249-250.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

CATHERINE T. MANAHAN
Associate Justice