REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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CITY GOVERNMENT OF VALENZUELA, represented by City Mayor REXLON T. GATCHALIAN, Petitioner,	**CTA Case No. 9872**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HON. CEASAR R. DULAY, in his capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 17 2020 4:36 p.m.

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review*[1] filed by the City Government of Valenzuela, represented by City Mayor Rexlon T. Gatchalian, against the Commissioner of Internal Revenue, praying that the rulings of respondent dated October 26, 2017 and August 15, 2017, denying petitioner's claim for refund in the amount of ₱2,391,432.47 be reversed and set aside.

THE FACTS

Petitioner, the City Government of Valenzuela, is a local government unit duly created, organized and constituted under the laws of the Republic of the Philippines, with the power to sue and be sued, represented herein by its City Mayor Rexlon T. Gatchalian, with principal office located at New Government Center, Mac Arthur Highway, Brgy. Karuhatan, Valenzuela City, Metro Manila. It is represented by the City Legal Office, 3rd Floor, Executive Building,

[1] Docket, pp. 10 to 21.

New Government Center, MacArthur Highway, Brgy. Karuhatan, Valenzuela City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), empowered to perform the duties of his office arising under the Tax Code of 1997. The CIR holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

The subject property covered by TCT No. V-40450[4] previously owned by International Communication Corporation (ICC) was auctioned by the City Government of Valenzuela on December 10, 2012 due to non-payment of real property tax in the amount of ₱652,756.15.[5]

ICC failed to exercise its right of redemption within the prescriptive period, and thus, ownership of the subject property was transferred to the City Government of Valenzuela.[6]

The City Government of Valenzuela paid the amount of One Million Nine Hundred Four Thousand Seven Hundred Thirty Nine and 85/100 (₱1,904,739.85) Capital Gains Tax and Four Hundred Eighty Six Thousand Six Hundred Ninety Two and 62/100 (₱486,692.62) as well as Documentary Stamp Tax, inclusive of penalties, surcharges, and compromise fee to the Bureau of Internal Revenue on July 8, 2016 in order to secure a Certificate Authorizing Registration and later on transfer the title unto its name.[7]

The City Government of Valenzuela registered its claim for refund through its letter dated July 23, 2016.[8] The Revenue District Officer of Revenue District Office No. 24 denied the City Government

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[2] Petitioner's Memorandum, Docket p. 232.
[3] Respondent's Memorandum, Docket, p. 195.
[4] Exhibit "P-3", Docket, p. 162.
[5] Par. 1, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 154.
[6] Par. 2, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, pp. 154 to 155.
[7] Par. 3, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155; Memorandum, Docket, p. 196; Exhibits P-14, P-14-a, R-14, R-14-a, Docket, p. 179; Exhibits P-14-b and R-14-b, Docket, p. 180.
[8] Par. 4, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155. *rD*

of Valenzuela's claim for refund through its ruling dated August 15, 2017.[9]

The City Government of Valenzuela filed its Motion for Reconsideration dated September 12, 2017.[10] Said Motion was denied by the Commissioner of Internal Revenue in his ruling dated October 26, 2017.[11]

Aggrieved, petitioner filed the instant *Petition for Review*[12] on July 9, 2018.

Respondent filed his *Answer (With Special Affirmative Defenses)*[13] on August 14, 2018, interposing the following special and affirmative defenses:

1) The CTA does not have jurisdiction over the subject matter of the case since the Petition for Review was prematurely filed and should be dismissed for lack of cause of action for non-compliance of the condition precedent and for failure to exhaust all available administrative remedies prior to the filing of the Petition for Review.

2) Petitioner should have first filed an appeal before the Secretary of Finance, instead of filing a Petition for Review before the CTA. The hasty filing of the Petition for Review is in gross violation of Section 4 of the NIRC of 1997, and Section 3 of Department Order No. 23-01.

3) It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is a ground for the dismissal of the complaint.

On January 17, 2019, petitioner filed a *Motion for Leave (to submit and admit the attached Comment on the Respondent's*

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[9] Par. 5, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155.
[10] Par. 6, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155.
[11] Par. 7, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155.
[12] Docket, pp. 10 to 21.
[13] Docket, pp. 53 to 62.

Special Affirmative Defense),[14] with attached *Comment (on the Respondent's Special Affirmative Defense),*[15] which was granted and admitted by the Court in the Resolution dated January 30, 2019.[16]

In the Resolution dated February 21, 2019,[17] this Court denied respondent's *Special Affirmative Defenses*, incorporated in his *Answer*, with respect to his allegation that the instant Petition for Review should be dismissed for lack of jurisdiction.

During the *Pre-Trial Conference* held on July 2, 2019[18], petitioner and respondent's counsels manifested that since the instant petition involves only legal questions which does not require trial, they agreed that they will be presenting joint exhibits. Thus, they subsequently filed their *Joint Motion to Approve (the Stipulation of Facts, Joint Exhibits and Consolidation of Issues)*[19] on August 7, 2019. Said motion was admitted and the Stipulation of Facts, Joint Exhibits and Consolidation of Issues was approved by the Court in the Resolution dated August 14, 2019.[20] Both parties were given thirty (30) days from notice to file their respective memoranda.

In view of the filing of respondent's *Memorandum*[21] on September 12, 2019, and petitioner's *Memorandum*[22] on September 26, 2019, this case was deemed submitted for decision on October 9, 2019.[23]

Hence, this Decision.

THE ISSUES

The parties presented the following issues[24] for this Court's resolution, to wit:

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[14] Docket, pp. 123 to 125.
[15] Docket, pp. 126 to 130.
[16] Docket, pp. 133 to 134.

[17] Docket, pp. 135 to 142.
[18] Order, Docket, pp. 148 to 149.
[19] Docket, pp. 154 to 158.
[20] Docket, p. 194.
[21] Docket, pp. 195 to 202.
[22] Docket, pp. 231 to 245.
[23] Docket, p. 274.
[24] Consolidated Issues, Docket, p. 155.

> "1. Whether the City Government of Valenzuela, being a local government unit, is liable to pay Capital Gains Tax, Documentary Stamp Tax, Penalties, Surcharges and Compromise Fee for acquisition of the subject property covered by TCT No. V-40450 (now TCT No. 013-2016002661) by reason of its revenue collection power under the Local Government Code; and
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> 2. Whether the City Government of Valenzuela is a proper party in this petition."

Petitioner's arguments:

Petitioner submits that it is not liable to pay capital gains tax (CGT), documentary stamp tax (DST), penalties, surcharges and compromise fee, for the acquisition of the subject property covered by TCT No. V-40450 (now TCT No. 013-2016002661), by reason of the nature and extent of its taxing power under the Local Government Code.

According to the petitioner, the imposition of CGT presupposes capital gains, and in auction sales conducted by local governments to collect real property taxes, landowners normally incur capital loss. Hence, the imposition of capital gains tax is improper.

Thus, the presumption of gain under Sections 24(D)(1) and 27(D)(5) of the National Internal Revenue Code (NIRC) of 1997, as amended, is not a conclusive presumption and may be overturned by sufficient evidence that the forced seller incurred capital losses during the auction sale. And when the forced seller incurred capital losses, capital gains tax is not applicable. In this case, petitioner should be entitled to its refund claim since it actually paid the subject CGT, surcharges and penalties in the amount of ₱1,904,739.85.

Petitioner likewise argues that in case of want of bidder, the acquisition of property by the city government is not by reason of a conditional sale but by forfeiture proceedings which is beyond the ambit of capital gains tax.

In addition, petitioner avers that it is not liable to pay documentary stamp tax for acquisitions of real property made by reason of forfeiture proceedings.

Finally, petitioner maintains that it is a proper party in the Petition for Review since it actually paid the contested DST and CGT, including penalties and surcharges. Otherwise, it could not secure the Certificate Authorizing Registration to register its title over the subject property.

Respondent's counter-arguments:

Respondent counters that petitioner could not cite specific and applicable provisions of the Tax Code of 1997, as amended, that grants exemption from the payment of CGT, DST, and other transfer taxes and penalties from the forfeiture, sale/disposition of real property through public auction. The payment of the subject taxes are essential and mandatory requirements for the purpose of transfer of ownership of the subject property in the name of the City Government of Valenzuela.

It is settled that tax refunds are strictly construed against the person or entity claiming it.

Respondent likewise argues that for CGT, it is the transaction that is taxed, and not the actual gain/loss. Moreover, there was no erroneous payment of CGT and DST (plus penalties, surcharges, and compromise fee, if applicable), as it is a condition precedent in the transfer of real property under the name of the new registered owner.

Respondent avers that granting without admitting that there is a valid claim for refund, ICC is the proper party to claim for refund of CGT, and not the City Government of Valenzuela. In fact, in the Capital Gains Tax Return (BIR Form 1706), it was clearly indicated that ICC is the payor of CGT, and not the City Government of Valenzuela. Thus, there should have been a compulsory joinder of an indispensable party, as ICC is a party in interest, without whom no final determination can be had of an action, pursuant to Section 7, Rule 3 of the Revised Rules of Court.

THE COURT'S RULING

The Petition for Review is partly meritorious. *m*

Before delving into the merits of petitioner's claim for refund, We shall first determine the timeliness of petitioner's administrative and judicial claims.

Both the administrative and judicial claims for refund were timely filed.

To recover an erroneously or illegally assessed or collected tax, a penalty collected without authority, or sum excessively or wrongfully collected, Section 229 of the NIRC of 1997, as amended, provides as follows:

> "**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 without authority, 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."

The foregoing section provides the following requisites, to wit:

1. There must be an erroneous or illegal assessment or collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected; *ɲo*

2. The administrative claim for refund has been duly filed with the CIR within two (2) years after the payment of tax or penalty; and

3. No suit or proceeding may be instituted with this Court after the expiration of two (2) years from date of payment of the tax or penalty.

Thus, to prove compliance with Section 229 of the NIRC of 1997, as amended, it must be proven that both the administrative and judicial claims were filed within the two-year prescriptive period indicated therein.

In the instant case, the parties stipulated that petitioner City Government of Valenzuela paid the amount of One Million Nine Hundred Four Thousand Seven Hundred Thirty Nine and 85/100 (₱1,904,739.85) Capital Gains Tax; and Four Hundred Eighty Six Thousand Six Hundred Ninety Two and 62/100 (₱486,692.62) as well as DST, inclusive of penalties, surcharges, and compromise fee to the Bureau of Internal Revenue on **July 8, 2016** to secure a Certificate Authorizing Registration, and later on transfer the title unto its name.[25]

Counting two (2) years from July 8, 2016, petitioner had until **July 8, 2018**, within which to file its claim for refund/tax credit, both in the administrative and judicial levels. Considering that petitioner filed its administrative claim for refund on **July 23, 2016**,[26] the same is timely filed. Anent its judicial claim, considering that July 8, 2018 falls on a Sunday, petitioner had until the next working day, or until July 9, 2018, within which to file its Petition for Review. In this case, petitioner timely filed its judicial claim on **July 9, 2018**.[27] Thus, petitioner's claim for refund on the alleged erroneously collected taxes were filed well within the two-year prescriptive period.

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[25] Par. 3, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155; Memorandum, Docket, p. 196; Exhibits P-14, P-14-a, R-14, and R-14-a, Docket, p. 179; Exhibits P-14-b and R-14-b, Docket, p. 180.

[26] Par. 4, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 155; Exhibit "P-16" and "R-16," Docket, pp. 186 to 189.

[27] Docket, pp. 10 to 21.

MO

An involuntary sale is subject to capital gains tax.

Petitioner argues that in case of want of bidder in an auction sale, the acquisition of property by the city government is by forfeiture proceedings, which is beyond the ambit of capital gains tax.

We are not convinced.

Section 27 (D) (5) of the NIRC of 1997, as amended, provides as follows:

> "**SEC. 27.** ***Rates of Income on Domestic Corporations. —***
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> xxx xxx xxx
>
> (D) Rates of Tax on Certain Passive Incomes. —
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> xxx xxx xxx
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> (5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* — A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings."

Based on the foregoing provision, a capital gains tax of six percent (6%) is imposed on the gains ***presumed*** to have been realized in the ***sale, exchange or disposition*** of lands and/or buildings, which are not actively used in the business of a corporation, and which are treated as ***capital assets*** based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the NIRC, whichever is higher.[28] In other words, for capital gains to be imposed on a transaction, it must be established that there was a ***sale, exchange, or disposition***, and that the property is a ***capital asset***.

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[28] *Commissioner of Internal Revenue vs. Aquafresh Seafoods, Inc.*, G.R. No. 170389, October 20, 2010. MO

There was a sale, exchange, disposition within the purview of Section 27 (D) (5) of the NIRC of 1997, as amended.

Capital gains tax is defined as a tax on the gain from the sale of the taxpayer's property forming part of capital assets.[29] The words "***sale***" and "***purchase***" mean, in the absence of any expression to limit their significance, a transmutation of property from one party to another in consideration of some price or recompense in value.[30] "***Exchange***," on the other hand, is equivalent to purchase, the only difference being that instead of paying money for the price or consideration, property is given in lieu thereof.[31] Meanwhile, ***"to dispose,"*** means to part with the right to or ownership of property, in other words, a change of property; to put into the hands of another; to put into another's power and control; to transfer to any person.[32] Simply put, for the capital gains tax to be imposed under Section 27 (D) (5) of the NIRC of 1997, as amended, there must be a sale, an exchange, or disposition of lands and/or buildings.

In this case, there was no question that there was a ***sale*** of the subject property. As stipulated by the parties, the subject property previously owned by ICC was auctioned by the City Government of Valenzuela due to non-payment of real property tax.[33] Thereafter, ICC failed to exercise its right of redemption within the prescriptive period, and thus, ownership of the subject property was transferred to the City Government of Valenzuela,[34] in accordance with Section 263 of the Local Government Code, which reads:

> **"Section 263. *Purchase of Property by the Local Government Units for Want of Bidder*.** — In case there is no bidder for the real property advertised for sale as provided herein, or if the highest bid is for an amount insufficient to pay the real property tax and the related interest and costs of sale, the local treasurer conducting the sale shall purchase the property in behalf of the local

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[29] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc., et al.,* G.R. No. 104171, February 24, 1999
[30] Philippine Law Dictionary, Third Edition, © 1988, p. 772.
[31] *Id.,* p. 340.
[32] *Id.,* p. 278.
[33] Par. 1, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 154.
[34] Par. 2, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, pp. 154 to 155.

> government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned, upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.
>
> Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the real property tax and the related interest and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be vested on the local government unit concerned."

According to the foregoing provision, in the absence of a bidder, the City Treasurer is impelled to ***purchase*** the property on behalf of the city.[35] Thereafter, if the property is not redeemed as provided herein, the ownership shall be vested on the LGU concerned.

As evidenced by the *Certificate of Sale of Delinquent Real Property to City of Valenzuela*[36] attested to by Adelia E. Soriano, ICO-Office of the City Treasurer, there was no bidder at the public auction of the delinquent real property, and the subject property was ***sold*** to the City of Valenzuela. Thus, despite the involuntary nature thereof, there is no question that the ownership of the subject property was transferred through a *sale, exchange, or disposition*, within the purview of Section 27 (D) (5) of the NIRC of 1997, as amended. Consequently, the said transaction was correctly subjected to capital gains tax.

There is no showing that the subject property was an ordinary asset, and the parties did not dispute the classification of the same as a capital asset.

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[35] *City of Davao vs. The Intestate Estate of Amado S. Dalisay, etc.*, G.R. No. 207791, July 15, 2015.
[36] Exhibits " P-11" and " R-11," Docket, p. 176.

With regard to the determination if the subject property is a ***capital asset***, reference must be made to the definition of "capital assets," as found in Section 39 (A) (1) of the NIRC of 1997, as amended, which provides that:

> "**SEC. 39. *Capital Gains and Losses.* –**
>
> (A) *Definitions* – As used in this Title. -
>
> (1) *Capital Assets.* - the term *'capital assets'* means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."

The statutory definition of capital assets is *negative* in nature. Thus, if the property or asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets.[37]

For purposes of determining whether real property is a capital asset or an ordinary asset, Revenue Regulation Nos.7-2003[38] and 9-2012,[39] both declare that the involuntary transfer of real property does not affect its taxability either as a capital asset or an ordinary asset, as the case may be.

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[37] *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,* G.R. No. 222837, July 23, 2018, citing *Calasanz, et al. v. Commissioner of Internal Revenue,* 228 Phil. 638, 644 (1986).

[38] SUBJECT: Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27E and 28(A)(2) of the same Code.

[39] SUBJECT: Implementing Sections 24(D)(1), 27(D)(5), 57, 106 and 196 of the National Internal Revenue Code of 1997 on Non-Redemption of Properties Sold During Involuntary Sales.

For easy reference, the pertinent provisions of RR No. 7-2003 are quoted hereunder, to wit:

"**SEC. 3. *GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET.* –**

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g. ***Treatment of real property subject of involuntary transfer.*** — In the case of involuntary transfers of real properties, including expropriation or foreclosure sale, the involuntariness of such sale shall have no effect on the classification of such real property in the hands of the involuntary seller, either as capital asset or ordinary asset, as the case may be.

xxx xxx xxx

SEC. 4. *APPLICABLE TAXES ON SALE, EXCHANGE OR OTHER DISPOSITION OF REAL PROPERTY.* — Gains/Income derived from sale, exchange, or other disposition of real properties shall, unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the subject properties are classified as capital assets or ordinary assets.

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c. *In the case of domestic corporations.* —

(i) Capital gains presumed to have been realized from the sale, exchange or disposition of lands and/or buildings located in the Philippines, which are classified as capital assets, shall be subject to a capital gains tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Sec. 6(E) of the Code, whichever is higher, of such land and/or buildings pursuant to Sec. 27(D)(5) of the Code.

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On the other hand, Section 2 of RR No. 9-2012 specifically deals with the taxability of real property, in case of non-redemption thereof, when the property was sold during involuntary sales, to wit:

> "**SEC. 2.** ***Taxability of Owner's/Mortgagor's Failure to Redeem His Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period***. - In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the capital gains tax (CGT) imposed under Sections 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due.
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> The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from the expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.
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> xxx xxx xxx ."

From the foregoing, it can be gleaned that the involuntary nature of the sale, exchange, or disposition of the subject property, does not affect its classification as a capital asset or an ordinary asset. Likewise, the involuntary sale of real property does not affect the taxability of the transaction, and it is not exempt from the imposition of capital gains tax.

In this case, there is no showing that the subject property was held by ICC as an ordinary asset. Thus, it was considered a capital asset and was taxed as such. Moreover, this Court notes that the parties never disputed the classification of the subject property as a capital asset held by ICC. Consequently, capital gains tax was correctly imposed on the sale of the subject property.

Settled is the rule that exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims tax exemption must point to a **specific provision of law** conferring, **in clear and plain terms**, exemption from the common burden[40] and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[41]

Thus, in the absence of a specific provision of law exempting petitioner or the subject transaction from the payment of capital gains tax, the imposition thereof must be upheld.

Assuming *arguendo*, that the involuntary sale should not have been subjected to CGT, the proper party to claim the refund of the said tax is ICC, the seller on whom the tax is imposed by law.

Section 56 (A) (3) of the NIRC of 1997, as amended, provides that capital gains tax due on the sale of real property is a liability for the account of the ***seller***, to wit:

> **"Section 56. *Payment and Assessment of Income Tax for Individuals and Corporations. —***
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> (A) *Payment of Tax —*
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> xxx xxx xxx
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> (3) *Payment of Capital Gains Tax.* — The total amount of tax imposed and prescribed under Section 24(C), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: *Provided,* That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required: *Provided, further,*

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[40] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) et. al., vs. Commissioner of Internal Revenue et. al.,* G.R. No. 213446, July 3, 2018, citing *The City of Iloilo vs. Smart Communications, Inc. (SMART),* 599 Phil. 492, 497 (2009).

[41] *Id.*, citing *Quezon City vs. ABS-CBN Broadcasting Corp.*, 588 Phil. 785, 803 (2008).

That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, and subject to the penalties prescribed under applicable provisions of this Code: *Provided, finally,* That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund of such tax upon verification of his compliance with the requirements for such exemption."

Therefore, it has been held that since capital gains is a tax on passive income, it is the ***seller***, not the buyer, who is liable to shoulder the tax.[42] As far as the government is concerned, therefore, the capital gains tax remains a liability of the ***seller*** since it is a tax on the seller's gain from the sale of the real estate.[43] In this case, while ICC was compelled to sell the subject property to satisfy its tax liabilities due to the City Government of Valenzuela, the seller of the subject property is still ICC, and not the petitioner.

Petitioner is exempt from the payment of DST pursuant to Section 281 of the LGC of 1991.

Petitioner avers that it is not liable to pay DST for acquisitions of real property made by reason of forfeiture proceedings, pursuant to Section 281 of the Local Government Code (LGC) of 1991.

We agree with petitioner.

DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[44] With regard to the transfer of real property, Section 196 of the NIRC of 1997, as amended, reads as follows:

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[42] *Republic of the Philippines, represented by the Department of Public Works & Highway (DPWH) vs. Spouses Salvador,* G.R. No. 205428, June 7, 2017.

[43] *Republic of the Philippines, represented by the DPWH vs. Arlene R. Soriano,* G.R. No. 211666, February 25, 2015; *Tomas K. Chua vs. Court of Appeals,* G.R. No. 119255, April 9, 2003.

[44] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 167330, June 12, 2008; *International Exchange Bank vs. Commissioner of Internal Revenue,* G.R. No. 171266, April 4, 2007.

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> "**SECTION 196.** ***Stamp Tax on Deeds of Sale and Conveyances of Real Property***. — All conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration:
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> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed One thousand pesos (P1,000), Fifteen pesos (P15.00).
>
> (b) For each additional One thousand pesos (P1,000), or fractional part thereof in excess of One thousand pesos (P1,000) of such consideration or value, Fifteen pesos (P15.00).
>
> When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument or writing subject to such tax the Commissioner, provincial or city Treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon."

On the basis of the foregoing, the **general rule** is that DST shall be imposed on all conveyances, deeds, instruments, or writings, whereby any land, tenement or other realty sold shall be transferred to the purchaser.

However, this Court finds that reference must also be made to an **exception** found in Section 281 of the LGC of 1991, as amended, which states:

> "SEC. 281. ***Fees in Registration of Papers or Documents on Sale of Delinquent Real Property to Province, City or Municipality.*** – All certificates, documents, and papers covering the sale of delinquent property to the province, city or municipality, if registered in the Registry of Property, shall be exempt from the documentary stamp tax and registration fees."

Based on the foregoing provision, all certificates, documents, and papers covering the sale of delinquent property to the city, if registered in the Registry of Property, shall be exempt from DST.

At this juncture, this Court finds it necessary to mention that while the NIRC of 1997, as amended, is the later law, the provisions of the LGC, as amended, will still be applied, as it is the special law governing local government units.

It is settled that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former, to wit:

> "Between [PD] 1520 (sic), on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. **The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former.** In addition, 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. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute."[45] *(Emphasis supplied.)*

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[45] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL),* G.R. No. 179259, September 25, 2013; citing *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.

In fact, the Supreme Court ruled that the circumstance that the special law was passed before or after the general law does not change the principle, to wit:

> "A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.
>
> A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> **The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication**."[46] *(Emphasis supplied.)*

In this case, both parties are in agreement that the subject property covered by TCT No. V-40450, owned by ICC, was auctioned by the petitioner, City Government of Valenzuela, due to the non-payment of real property tax.[47] Since ICC failed to exercise its right of redemption within the prescriptive period, the ownership of

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[46] *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,* G.R. No. 198146, August 8, 2017; citing *Vinzons-Chato vs. Fortune Tobacco Corporation,* 552 Phil. 101 (2007).

[47] Par. 1, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, p. 154.

the subject property was transferred to the City Government of Valenzuela.[48]

Considering that the subject certificates, documents, and papers cover the sale of delinquent property to the city, and is duly registered in the Registry of Property,[49] the same shall be exempt from DST. Thus, petitioner is correct in claiming that it is exempt from the payment of DST for the certificates, documents, and papers covering the sale of the subject delinquent property.

A perusal of the joint exhibits of the parties, namely the DST Return[50] and the receipt,[51] as proof of payment thereof, shows that petitioner indeed paid the amount of ₱486,692.62 for DST. Hence, petitioner was able to prove compliance with the requisites for the grant of its claim for refund of DST.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby ordered to **REFUND** to petitioner the amount of and Four Hundred Eighty Six Thousand Six Hundred Ninety Two and 62/100 (₱486,692.62) representing erroneously collected DST.

However, petitioner's claim for the refund of Capital Gains Tax in the amount of One Million Nine Hundred Four Thousand Seven Hundred Thirty Nine and 85/100 (₱1,904,739.85) is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[48] Par. 2, Stipulation of Facts, Joint Motion to Approve (*the Stipulation of Facts, Joints Exhibits and Consolidated Issues)*, Docket, pp. 154 to 155.
[49] Exhibits "P-15" and "R-15," Docket, p. 181.
[50] Exhibits "P-14-a" and "R-14-a," Docket, p. 179.
[51] Exhibits "P-14" and "R-14," Docket, p. 179.

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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