REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8757

Members:
Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
MAR 15 2016
2:15 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review[1] filed by the Bases Conversion and Development Authority on January 10, 2014 seeking the refund of ₱19,982,485.76, allegedly representing creditable withholding tax (CWT) it paid from January 16, 2012 to December 31, 2012 in connection with the sale or disposition of its allocated units or share in the "Serendra Project" located in Fort Bonifacio, Taguig City.

FACTS

Petitioner Bases Conversion And Development Authority (BCDA) is a government instrumentality vested with corporate powers, duly organized and existing under and by virtue of Republic Act (RA) No. 7227, known as the "Bases Conversion and Development Act of 1992", as amended by RA No. 7917. Its principal office address is at BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City.[2] Petitioner was created primarily for the following purposes:

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[1] Docket, pp. 6-22.
[2] Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 2714.

1. Convert into alternative productive uses the military reservations in the country and their extensions; and for this purpose, raise funds by the sale of portions of Metro Manila military camps transferred to it by the President; and

2. Apply said funds to the development and conversion to productive civilian use of the specified former US bases.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2003, petitioner executed a Joint Development Agreement (JDA)[4] with Ayala Land, Inc. (ALI), where petitioner contributed a parcel of land located in Fort Bonifacio to an unincorporated Joint Venture; while ALI contributed capital and expertise to undertake and complete the implementation of the "Serendra Project". In return, the parties would receive proceeds from the sale of their respective allocated condominium units in the Serendra Project.

For the purpose of implementing the JDA, petitioner executed a Trust Agreement[5] with the Development Bank of the Philippines (DBP) on February 13, 2004. With ALI's consent, DBP was appointed under the Trust Agreement as petitioner's trustee. Pursuant to the Trust Agreement, petitioner's allocated condominium units shall be registered under the name of DBP and shall hold them in trust for the former's benefit.

In a letter dated May 19, 2006, BIR Revenue District Office No. 44-Taguig and Pateros informed DBP that BCDA was registered as a taxpayer of the district under the account name of "BCDA Trust Account 11336" for "Serendra Project"

[3] Par. 3.1. Petition for Review, docket, p. 9.
[4] Exhibits "P-1" and "P-1-A" to "P-1-B".
[5] Exhibits "P-2", "P-2-A", "P-2-B", and "P-2-C".

and assigned with "Tax Identification Number 245-320-696-000".[6]

Subsequently, petitioner sent a letter[7] dated July 3, 2007 to former BIR Commissioner Lilian B. Hefti, requesting confirmation of its exemption from all taxes and fees, including CWT, on its share of revenues collected from the joint development with ALI of the 12.6 hectare lot in Fort Bonifacio on which the Serendra Project is located.

Respondent did not reply to its July 3, 2007 letter, prompting petitioner to send two more letters dated October 1, 2007[8] and November 20, 2007[9]. Petitioner, however, did not receive any reply from respondent.

From January 16, 2012 to December 31, 2012, petitioner through its trustee, DBP, paid under protest the total amount of ₱19,982,485.76, representing CWT on the sale of its allocated condominium units. The payments are detailed as follows:

DATE OF PAYMENT	TYPE OF TAX	SUBJECT PROPERTIES	AMOUNT	EXHIBIT
January 16, 2012	CWT	Serendra Units	₱ 848,250.62	"P-8"
January 30, 2012	CWT	Serendra Units	9,481.16	"P-9"
February 3, 2012	CWT	Serendra Units	117,727.51	"P-11"
February 10, 2012	CWT	Serendra Units	1,024,966.26	"P-10"
March 12, 2012	CWT	Serendra Units	569,159.18	"P-12"
April 10, 2012	CWT	Serendra Units	4,106,511.93	"P-13"
May 10, 2012	CWT	Serendra Units	491,566.85	"P-14"
May 22, 2012	CWT	Serendra Units	12,000.00	"P-15"
June 8, 2012	CWT	Serendra Units	187,766.84	"P-16"
July 10, 2012	CWT	Serendra Units	1,662,668.13	"P-17"
August 10, 2012	CWT	Serendra Units	2,487,941.05	"P-18"
September 10, 2012	CWT	Serendra Units	1,122,684.76	"P-19"
October 10, 2012	CWT	Serendra Units	2,140,442.34	"P-20"
November 9, 2012	CWT	Serendra Units	4,610,668.81	"P-21"
December 10, 2012	CWT	Serendra Units	590,650.32	"P-22"
TOTAL			**₱19,982,485.76**	

Petitioner claims that the payment under protest was made in order to facilitate the transfer of the Condominium Certificates of Title to fully paid buyers.

[6] Stipulated Fact, JSFI, docket, p. 2715; Exhibit "P-4".
[7] Exhibits "P-5".
[8] Exhibits "P-6".
[9] Exhibits "P-7".

On June 19, 2013, petitioner sent a letter[10] dated June 7, 2013 to respondent claiming refund of the amount of ₱19,982,485.76, representing erroneously paid or illegally collected CWT in connection with its share of the revenues collected from the joint development with ALI on the Serendra Project.

Due to respondent's inaction on petitioner's claim for refund and in order to avoid the lapse of the two-year prescriptive period provided under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed the instant Petition for Review[11] on January 10, 2014.

Within the extended time granted by the Court,[12] respondent filed her Answer[13] through registered mail on March 6, 2014 and received by the Court on March 14, 2014. In the said Answer, respondent interposed the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

2. Section 8 (d) of R.A. 7227, as amended by R.A. 7917, authorizes the President and, subsequently the petitioner BCDA, to dispose of lands in Fort Bonifacio and Villamor as the latter so determines and that the proceeds from such disposition of lands of Metro Manila military camps were made tax-exempt.

3. The BIR has been consistent in its rulings that sale by the petitioner BCDA of parcels of parcels of land located in identified areas within Fort Bonifacio and Villamor Air Base under the foregoing Acts, are exempt from CWT, capital gains tax and documentary stamp tax.

4. However, in this case, what is sought to be exempted from internal revenue taxes, including CWT, are condominium units of petitioner BCDA in the Serendra Project.

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[10] Exhibits "P-23" to "P-23-I".
[11] Docket, pp. 6-22.
[12] Order dated February 11, 2014, docket, p. 401.
[13] Docket, pp. 402-406.

5. There is no legal provision in Section 8 of R.A. 7227, as amended by R.A. 7916 that expressly or even impliedly exempts the sale of condominium units by petitioner BCDA.

6. The *BIR Ruling No. DA-376-2003 dated October 20, 2003* on the exemption from taxes of petitioner BCDA for its transactions involving the sale and disposition of assets under R.A. 7227 pertains to the sale of parcels of land located in Villamor Air Base and not to the sale of BCDA-allocated units in a condominium project like the subject Serendra Project.

7. In *BIR Ruling No. DA-243-04 dated May 7, 2004*, the BIR had already ruled on the taxability of the sale by BCDA of its socialized condominium units at subsidized cost/price to 'informal settlers' and held that:

> 'In reply, we regret to inform you that your request for exemption from the payment of capital gains tax and the documentary stamp tax on the sale by BCDA of socialized condominium to the "informal occupants/settlers" is hereby denied for lack of legal basis. <u>Section 1 (d) of R.A. 7917 exempts only the sales of areas of the military bases as authorized under such Act, including certain areas in Fort Bonifacio and Villamor AiskBam, Nowhere in the said Republic Act is a provision exempting the sale of socialized condominium units to the "informal occupants/settlers" of the military bases.</u> In the absence of a clear and unambiguous exempting provision, this Office cannot exempt the said transaction from payment of the capital gains tax and the documentary stamps tax imposed under Sections 27(D)(5) and 196 of the Tax Code 1997, respectively. It is well-settled rule that he who claims exemption should prove by convincing proofs that he is exempted. (Visayan Cebu Terminal Co. Inc. vs. Commissioner, L-19530 & L19444, February 27, 1965) Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. vs. Lianas, 49 Phil. 466 cited in Collector vs. Manila Comm. of Customs, L-28731, 28902, March 29, 1979)' (Underscoring supplied)

8. In its letter 10 January 2011, the BIR denied petitioner BCDA's claim for refund of the CWT in the total amount of Php144,603,130.93, clearly stating that the tax

exemption of BCDA does not include the sale of condominium units and therefore the sale is subject to capital gains, expanded withholding and documentary stamp taxes.

9. The BIR's denial of the BCDA's claim for refund of the CWT was based on the 13 December 2010 Memorandum No. 023-2010 of Deputy Commissioner Estela V. Sales, Legal and Inspection Group, BIR, which anchored its opinion on *BIR Ruling No. DA-243-04* dated 07 May 2004.

10. Aside from quoting the pertinent portion of *BIR Ruling No. DA-243-04* dated 07 May 2004, the 13 December 2010 Memorandum No. 023-2010 of Deputy Commissioner Estela V. Sales specifically noted that a closer perusal of R.A. 7916 shows that there is no language in Section 8 that expressly or even impliedly exempts the sale of condominium units by BCDA.

11. Tax exemptions must be clear and unequivocal. A taxpayer claiming tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exmption exists is resolved against the taxpayer (*Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, G.R. No. 156040, December 11, 2008*).

12. It is well-settled rule that he who claims exemption should prove by convincing proofs that he is exempted (*Visayan Cebu Terminal Co., Inc. vs. Commissioner, L-19530 & L-19444, February 27, 1965*).

13. Petitioner BCDA failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected.

14. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

15. It is incumbent upon the petitioner BCDA to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended.

16. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No.*

Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

17. Petitioner also failed to show that the subject claim for refund in the amount of P19,982485.76 has not been utilized.

18. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma 31 SCRA 95*) and, as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SC RA 121*)."

The Pre-Trial Conference was set on April 24, 2014.[14] Respondent's Pre-Trial Brief[15] was filed on April 10, 2014; while petitioner's Pre-Trial Brief[16] was filed on April 21, 2014.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[17] on June 17, 2014. This was approved and adopted by the Court via the Pre-Trial Order[18] promulgated on June 23, 2014.

During the trial, petitioner presented the following witnesses: (1) Ms. Hedda Lourdes Y. Rulona[19] – Department Manager for the Budget Department of petitioner; (2) Atty. Edilberto R. Rebato, Jr.[20] – Attorney VI at the Legal Services Department of petitioner; (3) Ms. Clemencia P. Vicente[21] – Officer-in-Charge for the Financial Management Services Department of petitioner; and (4) Mr. Paul M. Azura, Jr.[22] – Assistant Manager of the DBP Trust Services.

On October 24, 2014, petitioner filed its Formal Offer of Evidence[23].

In the Resolution[24] dated December 19, 2014, the Court admitted petitioner's Exhibits "P-1 and P-1-A to P-1-B", "P-2,

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[14] Notice of Pre-Trial Conference, docket, p. 408.
[15] Docket, pp. 409-411.
[16] Docket, pp. 412-424.
[17] Docket, pp. 2714-2717.
[18] Docket, pp. 2724-2728.
[19] Minutes of Hearing dated June 30, 2014, docket, p. 2729.
[20] Minutes of Hearing dated July 28, 2014, docket, p. 2730.
[21] Minutes of Hearing dated August 27, 2014, docket, p. 2731.
[22] Minutes of Hearing dated September 24, 2014, docket, p. 2732.
[23] Docket, pp. 2739-2774.
[24] Docket, pp. 2778-2782.

P-2-A, P-2-B and P-2-C", "P-3 to P-3-E", "P-4", "P-5 and P-5-A", "P-6", "P-7", "P-8", "P-8-A", "P-8-B", "P-8-B-1", "P-8-C", "P-8-D", "P-8-E", "P-8-F", "P-8-G", "P-8-H", "P-9", "P-9-A", "P-9-A-1", "P-10", "P-10-A", "P-10-A-1", "P-10-B-1", "P-10-C", "P-10-C-1", "P-10-D", "P-10-D-1", "P-10-E", "P-10-E-1", "P-10-F", "P-10-F-1", "P-10-G", "P-10-G-1", "P-10-H", "P-10-H-1", "P-11", "P-11-B", "P-11-B-1", "P-11-C", "P-11-C-1", "P-11-D", "P-11-D-1", "P-11-E", "P-11-E-1", "P-11-F", "P-11-F-1", "P-11-G", "P-11-G-1", "P-11-H", "P-11-H-1", "P-11-I", "P-11-I-1", "P-12", "P-12-A", "P-12-A-1", "P-12-B", "P12-B-1", "P-12-C", "P-12-C-1", "P-12-D", "P-12-D-1", "P-12-E", "P-13", "P-13-A", "P-13-A-1", "P-13-B", "P-13-B-1", "P-13-C", "P-13-C-1", "P-13-D", "P-13-D-1", "P-13-E", "P-13-E-1", "P-13-F", "P-13-F-1", "P-13-G", "P-13-G-1", "P-13-H", "P-13-H-1", "P-13-I", "P-13-I-1", "P13-J", "P-13-J-1", "P-13-K", "P-13-K-1", "P-14", "P-14-A", "P-14-A-1", "P-14-B", "P-14-B-1", "P-14-C", "P-14-C-1", "P-14-D", "P-14-D-1", "P-14-E", "P-14-E-1", "P-14-F", "P-14-F-1", "P-14-G", "P-14-G-1", "P-15", "P-15-A", "P-15-A-1", "P-16", "P-16-A", "P-16-A-1", "P-16-B" "P-16-B-1", "P-16-C", "P-16-C-1", "P-16-D", "P-16-D-1", "P-17", "P-17-A", "P-17-A-1", "P-17-B", "P-17-B-1", "P-17-C", "P-17-C-1", "P-17-D", "P-17-D-1", "P-17-E", "P-17-E-1", "P-17-F", "P-17-F-1", "P-17-G", "P-17-G-1", "P-17-H", "P-17-H-1", "P-17-I", "P-17-I-1", "P-18", "P-18-A", "P-18-A-1", "P-18-B", "P-18-B-1", "P-18-C", "P-18-C-1", "P-18-D", "P-18-D-1", "P-18-E", "P-18-E-1", "P-18-F", "P-18-F-1", "P-18-G", "P18-G-1", "P-18-H", "P-18-H-1", "P-18-I", "P-18-I-1", "P-18-J", "P-18-J-1", "P-19", "P-19-A", "P-19-A-1", "P-19-B", "P-19-B-1", "P-19-C", "P-19-C-1", "P-20", "P-20-A", "P-20-A-1", "P-20-B", "P-20-B-1", "P-20-C", "P-20-C-1", "P-20-D", "P-20-D-1", "P-20-E", "P-20-E-1", "P-20-F", "P-20-F-1", "P-20-G", "P-20-G-1", "P-20-H", "P-21", "P-21-A", "P-21-A-1", "P-21-B", "P-21-C", "P-21-D", "P-21-E", "P-21-F", "P-21-G", "P-21-H", "P-21-I", "P-21-J", "P-21-K", "P-21-L" "P-21-M", "P-21-N", "P-22", "P-23 to P-23-I", "P-24 to P-24-C", "P-25 to P-25-C", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37 to P-37-A", "P-38 to P-38-A", "P-39 to P-39-A", and "P-40 to P-40-A".

The Court, however, denied the admission of Exhibits "P-8-I", "P-8-I-1", "P-8-J", and "P-8-J-1", for not being found in the records and for failure of petitioner to have the said exhibits identified; Exhibits "P-33-A to P-33-J" for failure of petitioner to submit the originals for comparison; and Exhibits "P-6-A", "P-7-A", "P-8-A-1", "P-8-C-1", "P-8-D-1", "P-8-E-1", "P-8-F-1", "P-8-G-1", "P-8-H-1", "P-10-B", "P-11-A", "P-11-A-1", "P-21-B-1", "P-21-C-1", "P-21-D-1", "P-21-E-1", "P-21-F-1", "P-21-G-1", "P-21-H-1", "P-21-I-1", "P-21-J-1", "P-21-K-1", "P-21-

L-1", "P-21-M-1", "P-21-N-1", "P-22-A", "P-22-A-1", "P-22-B", "P-22-B-1", "P-22-C", "P-22-C-1", "P-22-D", "P-22-D-1", "P-22-E" and "P22-E-1" for failure of the said exhibits to correspond with the documents actually marked.

During the hearing for the initial presentation of respondent's evidence on February 18, 2015,[25] respondent's counsel failed to appear despite due notice. As a result, respondent's right to present evidence was deemed waived.[26]

Petitioner's Memorandum[27] was filed on April 10, 2015. On the other hand, respondent filed a Manifestation (In Lieu of Submission of Memorandum)[28] through registered mail on April 15, 2015 and received by the Court on April 22, 2015, stating that she is adopting all the pleadings she filed as her Memorandum.

On April 30, 2015, the Court noted respondent's manifestation and the case was declared submitted for decision.[29]

ISSUES

The parties submitted the following issues[30] for the Court's resolution:

1. Whether petitioner BCDA is exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project; and

2. Whether petitioner BCDA is legally entitled to a refund of ₱19,982,485.76, allegedly representing the total amount of CWT paid under protest from January 16, 2012 to December 31, 2012.

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[25] Minutes of the Hearing dated February 18, 2015, docket, p. 2785.
[26] Resolution dated February 18, 2015, docket, p. 2787.
[27] Docket, pp. 2796-2811.
[28] Docket, pp. 2812-2814.
[29] Docket, p. 2816.
[30] Stipulated Issues, JSFI, docket, p. 2715.

DISCUSSION/RULING

The Court shall determine first whether petitioner's claim for refund was timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
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> "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, 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." *(Emphasis supplied)*

Based on the foregoing, Section 204(C) applies to administrative claims for refund, while Section 229, to judicial claims for refund. In both instances, the taxpayer's claim for refund of erroneously or illegally collected tax must be filed within two years from the date of payment of the tax.

In the present case, the claim for refund pertains to erroneously paid CWT covering the period of January 16, 2012 to December 31, 2012. Since, the earliest date of payment was on January 16, 2012[31], petitioner had until January 16, 2014 within which to file both the administrative and the judicial claims for refund. Records indicate that petitioner filed the administrative claim for refund on June 19, 2013[32]; while the judicial claim was filed on January 10, 2014[33]. Clearly, petitioner has complied with the mandatory two-year prescriptive period.

The Court will now determine whether petitioner is exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project.

Petitioner contends that RA No. 7227, as amended, expressly exempts petitioner BCDA from payment of all forms of taxes including CWT.

On the other hand, respondent maintains that she has been consistent in her rulings that sale by petitioner of parcels of land located in identified areas within Fort Bonifacio and Villamor Air Base under RA No. 7227, as amended, are exempt from CWT, capital gains tax, and documentary stamp tax. However, she avers that in this case what is sought to be exempted from internal revenue taxes, including CWT, are condominium units of petitioner in the Serendra Project. Respondent argues that there is nothing in Section 8 of RA No. 7227, as amended, that expressly or even impliedly exempts the sale of condominium units by petitioner from internal revenue taxes.

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[31] Exhibits "P-8-A", "P-8-B", "P-8-B-1", "P-8-C", "P-8-D", "P-8-E", "P-8-F", "P-8-G", and "P-8-H".
[32] Exhibits "P-23" to "P-23-I".
[33] Docket, pp. 6-22.

Section 8(d) of RA No. 7227, as amended by RA No. 7917, provides that:

> "SEC. 8. *Funding Scheme.* – **The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base, namely**:
>
> xxx xxx xxx
>
> (d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: *Provided, further,* That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.
>
> The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided,* That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. **However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines.** The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds**:
>
> xxx xxx xxx
>
> **The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefor, exempt from all forms of taxes and fees**." *(Emphasis supplied)*

The foregoing provision specifically states that the proceeds from any sale of portions of Metro Manila military camps shall be exempt from all forms of taxes and fees. To hold petitioner liable for payment of tax would diminish the proceeds of the sale which shall be used for capitalization of petitioner as provided for under Section 8 of RA No. 7227.

Moreover, in the case of Commissioner of Internal Revenue vs. Bases Conversion and Development Authority[34], the Court of Tax Appeals *En Banc* has ruled that even though petitioner is still obliged to pay corporate income tax to the extent of its taxable income, the proceeds, however, from the sale of portions of Metro Manila military camps shall be exempt from income tax, and consequently from CWT. The significant portions of the CTA *En Banc* decision read:

> "Pertinent to the resolution of this issue is Republic Act No. 7227, as amended by Republic Act No. 7917 of which Section 1 provides:
>
> > SECTION 1. Paragraph (d), Section 8 of Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992, is hereby amended to read as follows:
> >
> > xxx xxx xxx
>
> By its very terms, proceeds of the sale of the respondent of portion of camps located in Metro Manila are exempt from all forms of taxes. **To tax the proceeds of the sale would be to tax an appropriation made by law, a power that the Commissioner of Internal Revenue does not have. The sale is in the nature of an obligation imposed by law in order to fulfill a public purpose.** Thus, we affirm the Court in Division when it explicitly held:
>
> > Thus, petitioner [herein respondent] is obliged to pay corporate income tax under either the 1977 NIRC or the NIRC of 1997, as amended by RA No. 9337, albeit petitioner's [respondent's] income tax liability is limited to its taxable income only. Since RA No. 7227, as amended by RA No. 7917 exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, which necessarily includes income tax, said proceeds do not form part of petitioner's taxable income. The proceeds of the sale of portions of Metro Manila military camps, not being part of petitioner's taxable income, are exempt from income tax and consequently, from

[34] CTA EB No. 1123, December 16, 2014.

> CWT. **To emphasize, while petitioner is not entitled to exemption from income tax, the proceeds from the sale of portions of Metro Manila military camps are tax exempt.** (With Emphasis)
>
> Notably, **if we sustain petitioner's barren assertions that respondent should be taxed on its sale of the Expanded Big Delta Lots, such payment would in effect have resulted in diminishing the proceeds of the sale that the Republic received and turned over to the respondent to capitalize it.** Under Section 8 of Republic Act No. 7227, it is clear that the capital of the respondent, which shall come from the sales proceeds and/ or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of tax. To reiterate, Section 1 of Republic Act No. 7917 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including income taxes. xxx
>
> xxx xxx xxx
>
> Therefore, consistent with the ruling of the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, it is certain from the respondent's charter, particularly in Section 8 of Republic Act No. 7227 that the capital of BCDA, which shall come from the sales proceeds and transfers of certain Metro Manila military camps are tax exempt."

Based on the foregoing, petitioner is clearly not liable to pay taxes, including CWT, on the proceeds of the sale of portions of Metro Manila military camps.

In this case, petitioner executed a JDA[35] with ALI on April 15, 2003, where petitioner contributed a parcel of land located in Fort Bonifacio to an unincorporated Joint Venture, while ALI contributed capital and expertise to undertake and complete the implementation of the "Serendra Project". In return, the parties would receive proceeds from the sale of their respective allocated condominium units in such project.

In her Judicial Affidavit[36], petitioner's witness, Ms. Clemencia P. Vicente, testified that petitioner BCDA executed the JDA with ALI so that the proceeds from the disposition/sale of the properties transferred to BCDA would

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[35] Exhibits "P-1" and "P-1-A" to "P-1-B".
[36] Docket, pp. 1894-1903.

serve as capital funding of BCDA and appropriated for the purposes enumerated in Section 8(d) of RA No. 7227, as amended, *i.e.*, to finance the modernization program of the Armed Forces of the Philippines (AFP), to finance infrastructure such as highways and railways to make Subic-Clark and other former bases accessible, and to finance the National Shelter Program, among others, *to wit*:

> "10. Q: Are you aware of the reason why BCDA decided to dispose the property transferred to it by RA 7227, as amended, which as you have mentioned a while, through a joint development with ALI?
>
> A: As far as I know, it is clearly mandated under our *'Charter'* or R.A. 7227. Section 8 of RA 7227 clearly provides that the proceeds from the disposition/sale of the properties transferred to BCDA serve two (2) purposes, to wit:
>
> (i) It serves as the capital funding of BCDA. Thus, Section 8 of RA 7227 provides that: ***'The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957 commonly known as Fort Bonifacio and Villamor (Nichols) Air Base xxx.'***
>
> (ii) It is deemed appropriated for the purposes enumerated in RA 7227. Thus, Section 8(d) thereof, as amended by RA 7917, reads: ***'The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds xxx:'*** i.e. **to finance the modernization program of the AFP, to finance infrastructure such as highways, railways to make Subic-Clark and other former bases accessible, to finance the National Shelter Program, among others."**

Clearly, the proceeds of the sale of the allocated condominium units of petitioner in the Serendra Project are for the capital funding of petitioner and appropriated for the purposes enumerated in Section 8(d) of RA No. 7227, as amended. Therefore, petitioner is exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project.

The Court shall now determine whether or not petitioner is entitled to a refund in the amount of ₱19,982,485.76, representing CWT it allegedly paid under protest in connection with the sale or disposition of its allocated units or share in the Serendra Project.

Here, petitioner failed to show that the subject claim for refund in the amount of ₱19,982,485.76 has not been utilized.

Records show that petitioner did not specifically admit nor deny that the amount of ₱19,982,485.76 being claimed for refund was included in Line 33H (Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter) of its 2012 Annual Income Tax Return (ITR) amounting to ₱75,420,428.13.[37] It bears stressing that even though the operations of petitioner resulted in a taxable loss of ₱249,659,569.17[38] in 2012, it incurred Minimum Corporate Income Tax (MCIT) amounting to ₱49,104,972.79[39], unto which the excess creditable taxes, which include the present claim, can be applied. Thus, it appears that the present claim of ₱19,982,485.76 has been utilized in payment of petitioner's MCIT.

Moreover, assuming that the present claim remains part of the excess tax credit as of December 31, 2012, it must be noted that based on Section 76 of the NIRC of 1997, as amended, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.[40]

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[37] Exhibit "P-35".
[38] Exhibit "P-35", Line 26C.
[39] Exhibit "P-35", Line 31.
[40] *Systra Philippines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

In exercising its option, petitioner should signify its intention for refund by marking the option "To be Refunded" in its 2012 Annual Income Tax Return.[41] However, perusal of its 2012 Annual Income Tax Return shows that significant information was missing, specifically Line 37 of the return or that portion where the taxpayer can signify its chosen option. Without this important detail, this Court cannot determine whether petitioner complied or violated the irrevocability rule under Section 76 of the NIRC of 1997, as amended.

It bears stressing that the irrevocability rule prevents petitioner from claiming twice the erroneously or illegally collected CWT: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.[42]

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[43] Accordingly, the burden of proving entitlement to a tax refund or issuance of tax credit certificate is on the taxpayer and failure to discharge the burden is fatal to the claim for refund or tax credit.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[41] Exhibit "P-35".
[42] *Systra Philippines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[43] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

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.

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

CERTIFICATION

Pursuant to Section 13, Article VIII 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