REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

EUROVERSAL PROPERTIES, INC., *Petitioner,*	**CTA Case No. 9869**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *J.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 03 2020, 2:05 p.m.

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D E C I S I O N

MANAHAN, *J.:*

This case involves the *Petition for Review*[1] filed by petitioner Euroversal Properties, Inc. (EPI) on July 6, 2018 against the inaction of respondent Commissioner of Internal Revenue (CIR) on the former's claim for refund of the alleged erroneously collected Capital Gains Tax (CGT) amounting to Twenty Five Million Three Hundred Thirty Two Thousand One Hundred Two Pesos (Php25,332,102.00) relative to the sale of thirteen parcels of land located at Gracia, Tagoloan, Misamis Oriental by petitioner to Filinvest Development Corporation (FDC).

THE PARTIES

Petitioner EPI is a domestic corporation organized and existing under and by virtue of Philippine laws with office address at Barangay Garcia, Tagoloan, Misamis Oriental.[2]

Respondent, on the other hand, is the duly appointed CIR vested under appropriate laws with the authority to carry functions, duties, and responsibilities of his office, including

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[1] Docket, CTA Case No. 9869, pp. 10-26.
[2] *Id.*, Joint Stipulation of Facts and Issues (JSFI) dated January 28, 2019, p. 295.

the authority to refund taxes under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, with office address at the Office of the Commissioner of Internal Revenue, Room 511, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On June 4, 2013, petitioner through a Contract to Sell sold thirteen (13) parcels of land ("Properties") with an aggregate area of One Hundred Fifty-Six Thousand Three Hundred Seventy-One square meters (156,371 sq.m.) located at Gracia, Tagoloan, Misamis Oriental with a total purchase price of Two Hundred Forty-Five Million Pesos (Php245,000,000.00) to FDC with a downpayment amounting to Seventy-Five Million Five Hundred Thousand Pesos (Php75,500,000.00) representing 30% of the purchase price.[4]

On July 5, 2013[5], petitioner EPI paid the corresponding CGT in the amount of Twenty-Five Million Three Hundred Thirty-Two Thousand One Hundred Two Pesos (Php25,332,102.00).[6]

Said CGT of 6% was based on the fair market value of the Properties totaling Four Hundred Twenty-Two Million Two Hundred One Thousand Seven Hundred Pesos (Php422,201,700.00) instead of the total purchase price of Php245,000,000.00.[7]

Allegedly, various issues arose in the said transaction wherein FDC incurred substantial additional expenses and was unable to pay the balance of the purchase price.[8] FDC caused the annotation of two adverse claims on six titles.[9]

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[3] Docket, CTA Case No. 9869, pp. 295-296.
[4] *Id.*, Petitioner's *Memorandum* dated October 29, 2019, p. 444; Docket, CTA Case No. 9869, JSFI, p. 296.
[5] In JSFI and Pre-Trial Order dated May 17, 2019, the date of payment of CGT was stated as July 5, 2013 while in Petitioner's Petition for Review and Memorandum, the date of payment of CGT was allegedly made on June 5, 2013. The date in Exhibit "P-4" or the CGT Return indicates June 5, 2013 but said exhibit was not admitted per Resolution dated July 10, 2019.
[6] Docket, JSFI, p. 296.
[7] *Id.*, Petition for Review, p. 13; Petitioner's *Memorandum* dated October 29, 2019, pp. 444-445.
[8] *Id.*, Par. 3.4 of Petitioner's *Memorandum* dated October 29, 2019, p. 445.; Docket, Par. 4.4 of Petition for Review, p. 13; Docket, Exhibit "P-8", p. 382.
[9] *Id.*, Exhibit "P-8", p. 382.

Thus, a case was filed in the Regional Trial Court (RTC)-Branch 21, Cagayan de Oro by petitioner for the cancellation of adverse claim on said Properties.[10] Eventually, petitioner EPI and FDC entered into a Compromise Agreement[11] dated July 8, 2016 which the RTC-Branch 21, Cagayan De Oro approved on July 12, 2016 by way of Judgment on the Compromise Agreement entered into by said parties[12].

In said Compromise Agreement dated July 8, 2016, the parties agreed that that petitioner EPI shall pay FDC the total amount of One Hundred Fifty Million Pesos (Php150,000,000.00) as the compromise amount while the latter agreed to cause the cancellation of the annotation of adverse claims and notice of *lis pendens* on the corresponding titles of said parcels of land. The parties also agreed to rescind the Contract to Sell.[13]

On July 3, 2018, petitioner filed its administrative claim for refund in the amount of Php25,332,102.00.[14] However, respondent had no action on the said claim for refund.

Hence, on July 6, 2018, petitioner EPI filed its Petition for Review. On October 10, 2018, respondent filed his Answer[15]. On November 8, 2018, petitioner EPI filed a Reply[16] on said Answer.

On October 26, 2018, this Court issued a Notice of Pre-Trial Conference.[17] Thus, the parties were required to submit their respective Pre-Trial Briefs. On January 10, 2019, respondent submitted his Pre-Trial Brief.[18] On the other hand, petitioner EPI submitted its Pre-Trial Brief[19] on January 11, 2019. On January 28, 2019, the parties submitted their Joint Stipulation of Facts and Issues[20], thus, this Court issued a Pre-Trial Order[21] on May 17, 2019.

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[10] *Id.*, Exhibit "P-5", p. 375.
[11] *Id.*, Exhibit "P-5", pp. 374-380.
[12] *Id.*, Exhibit "P-8", pp. 386-390.
[13] *Supra.*, Note 9.
[14] Docket, JSFI, p. 296.
[15] *Id.* at pp. 123-137.
[16] *Id.* at pp. 146-156, attached to the Motion for Leave to File the Attached Reply, pp. 142-145.
[17] *Id.* at pp. 138-139.
[18] *Id.* at pp. 163-167.
[19] *Id.* at pp. 168-177
[20] *Id.* at pp. 295-297.
[21] *Id.* at pp. 326-332.

After presenting its evidence, petitioner submitted its Formal Offer of Evidence (FOE)[22] on June 6, 2019 while respondent filed his comment[23] on June 21, 2019. This Court admitted majority of the exhibits formally offered in said FOE but denied admission of Exhibits "P-4", "P-6", "P-6-1", "P-10", and "P-10-1".[24]

On the other hand, respondent, after presenting his case, filed his own FOE[25] on October 3, 2019 while petitioner filed its comment[26] thereto on October 7, 2019. On November 6, 2019, this Court admitted all of respondent's exhibits formally offered and directed the parties to submit their respective memoranda.[27]

Finally, with the filing of petitioner's Memorandum dated October 29, 2019[28] on October 30, 2019 and respondent's failure to file his Memorandum within the time provided for per Records Verification dated January 17, 2020[29], the Court submitted the case for decision per this Court's Resolution dated January 23, 2020[30].

ISSUE[31]

Whether or not petitioner is entitled to its claim for refund of CGT in the amount of Twenty-Five Million Three Hundred Thirty-Two Thousand One Hundred Two Pesos (Php25,332,102.00)

Petitioner's Arguments[32]

Petitioner argues that it is entitled to the CGT refund on the following grounds, namely: (a) the subject CGT remitted to the BIR became an erroneously collected tax as a result of the rescission of the Contract To Sell; (b) the administrative and judicial claims for refund were timely filed; (c) it has a cause of

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[22] *Id.*, Formal Offer of Evidence dated June 4, 2019, pp. 340-350.
[23] *Id.*, Comment (Re: Petitioner Formal Offer of Evidence), pp. 416-418.
[24] Docket, Resolution dated July 10, 2019, pp. 420-421.
[25] *Id.*, Formal Offer of Evidence dated October 3, 2019, pp. 428-431.
[26] *Id.*, Comment/Objection (Re: Formal Offer of Evidence dated 03 October 2019), pp. 432-436.
[27] *Id.*, Resolution dated November 6, 2019, pp. 468-469.
[28] *Id.* at pp. 443-465.
[29] *Id.* at p. 470.
[30] *Id.* at p. 472.
[31] *Id.*, JSFI, p. 295.
[32] *Supra.*, Note 26.

action to file the present claim for refund; (d) it presented substantial evidence to support its claim for refund in accordance with Section 229 of the 1997 NIRC, as amended; and, (e) that substantial justice and equity warrant the refund of the CGT paid to avoid unjust enrichment on the part of the government.

Respondent's Arguments[33]

Respondent argues that there was no erroneously paid tax in the first place and that the instant petition was filed out of time.

RULING OF THE COURT

This Court shall determine first whether the instant petition is within the Court's jurisdiction.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[34] The jurisdiction of the CTA regarding claims for refund is provided under Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (3) xxx xxx;
>
> (4) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

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[33] *Supra.*, Note 13.
[34] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> (1) xxx xxx;
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> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, **the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**; (*Emphasis supplied*)

Based on the foregoing, the Court in Division shall exercise exclusive jurisdiction to review by appeal the inaction of petitioner CIR in cases involving claim for refund provided that the petition for review is filed within the two-year period prescribed under Section 229 of the 1997 NIRC, as amended.

Is the Petition for Review filed within the 2-year prescriptive period? We rule in the negative.

Petitioner's claim for refund was already prescribed at the time of filing of the petition for review

Sections 204(C) and 229 of the 1997 NIRC, as amended, provide for the procedure and prescriptive period on any claim for refund of erroneously or illegally collected internal revenue taxes, to wit:

> "**SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -
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> The Commissioner may –
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> (A) xxx xxx xxx:
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> (B) 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.
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> xxx xxx xxx
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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, of any sum alleged to have been excessively or in any manner wrongfully 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." (*Emphases supplied*)

Section 204(C) of the 1997 NIRC, as amended, pertains to the administrative claim for refund while Section 229 of the same law refers to the judicial claim for refund. Both of these remedies must be filed within 2-year period from the time of payment of tax as held in *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*[35], to wit:

> "... Thus, the two (2)-year prescriptive period commences to run from the time the refund is ascertained, ***i.e.*, the date such tax was paid**, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes."

Further, both the administrative and judicial claims for refund refer to "erroneously or illegally collected" internal revenue taxes and that both claims must be filed within the 2-year prescription period as held in *CBK Power Company Limited v. Commissioner of Internal Revenue*[36], to wit:

> "Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. **In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty**. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner..." (*Additional boldfacing and underscoring ours*)

Lastly, the 2-year prescriptive period under the abovementioned provision of the 1997 NIRC, as amended, is **mandatory** regardless of any circumstances or events that transpired within the said period as held in *Commissioner of Internal Revenue v. Manila Electric Company (Meralco)*[37], *viz*:

> Notwithstanding the foregoing, however, we uphold the ruling of the CTA *En Banc* that the claim for tax refund in the aggregate amount of Thirty-Nine Million Three Hundred Fifty-Nine Thousand Two Hundred Fifty-Four Pesos and

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[35] G.R. No. 182582, April 17, 2017.
[36] G.R. Nos. 193383-84 and 193407-08, January 14, 2015.
[37] G.R. No. 181459, June 09, 2014.

> Seventy-Nine Centavos (P39,359,254.79) pertaining to the period from January 1999 to July 2002 must fail since the same has already prescribed under Section 229 of the Tax Code, to wit:
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> > **Section 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, of any sum alleged to have been excessively or in any manner wrongfully 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.
>
> As can be gleaned from the foregoing, **<u>the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment</u>**. It should be pointed out further that while the prescriptive period of two (2) years commences to run from the time that the refund is ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes...." (*Additional boldfacing and underscoring ours*)

Such jurisprudential ruling is reiterated in the recent case of *Commissioner of Internal Revenue v. San Miguel Corporation (San Miguel)*[38], where the Supreme Court ruled that the period for filing of both administrative and judicial claims for refund is not only mandatory but also jurisdictional, to wit:

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[38] G.R. Nos. 180740 and 180910, November 11, 2019.

> "The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is **mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides **that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment**." (*Additional boldfacing ours*)

In this case, petitioner paid the CGT on July 5, 2013. Petitioner therefore had two (2) years therefrom or until July 5, 2015 within which to file both its administrative and judicial claims for refund. Thus, the filing of petitioner's administrative and judicial claims for refund on July 3, 2018 and July 6, 2018, respectively, was beyond the 2- year prescriptive period under Sections 204(C) and 229 of the 1997 NIRC, as amended.

As held in the abovementioned *Meralco* case, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[39]

There was no erroneous or illegal collection of CGT by respondent

In the instant case, petitioner had a valid contract with FDC at the time the CGT was paid on July 5, 2013. This Contract to Sell required an initial down payment of thirty percent (30%) of the total selling price. Under Sec. 49(B) of the NIRC of 1997, as amended, and implemented by Revenue Regulations (RR) No. 2-98 as amended by RR 6-2001 and RR 17-2003, any initial payment exceeding twenty five percent (25%) of the selling price will treat such transaction as a cash basis or deferred payment sale and thus the obligation to pay the 6% CGT on the entire selling price falls due. Provisions of the aforesaid law and rules are quoted hereinbelow:

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[39] *Supra.*, Note 35.

SEC. 49. *Installment Basis*. –

(A) xxx xxx xxx;

(B) Sales of Realty and Casual Sales of Personality. - In the case (1) of a casual sale or other casual disposition of personal property (other than 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), for a price exceeding One thousand pesos (P1,000), or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed twenty-five percent (25%) of the selling price, the income may, under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be returned on the basis and in the manner above prescribed in this Section. As used in this Section, the term 'initial payments' means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

xxx xxx xxx

REVENUE REGULATIONS NO. 17-2003

xxx xxx xxx

SECTION 3. Income Payments Subject to Creditable Withholding Tax. — Sec. 2.57.2 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

xxx xxx xxx

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset. — . . .

xxx xxx xxx

If the buyer is an individual not engaged in trade or business, the following rules shall apply:

(i) If the sale is a sale of property on the installment plan (i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price), no withholding is required to be made on the periodic installment payments. In such a case, the applicable rate of tax based on the gross selling price or fair market value of the property at the time of the execution of the contract to sell, whichever is higher, shall be withheld on the last installment or installments immediately prior to such last installment, if the last installment is not sufficient to cover the tax due, to be paid to the seller until the tax is fully paid.

(ii) . . .

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

(i) If the sale is a sale of property on the installment plan [i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price], the tax shall be deducted and withheld by the buyer from every installment which tax shall be based on the ratio of actual collection of the consideration against the agreed consideration appearing in the Contract to Sell applied to the gross selling price or fair market value of the property at the time of the execution of the Contract to Sell, whichever is higher.

The term 'consideration' refers to the selling price exclusive of interest. Interest earned as an incident of installment payment, if any, shall be subject to the ordinary income tax rate.

(ii) . . .

In any case, no Certificate Authorizing Registration (CAR)/Tax Clearance Certificate (TCL), shall be issued to the buyer unless the withholding tax due on the sale, transfer, or exchange of real property has been fully paid.

For sale of property on installment basis or deferred payment basis where the Contract to Sell is always executed before the execution of the Deed of Sale, the said Contract to Sell must be attached to the Deed of Absolute Sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the RDO having jurisdiction of the place where the property is located for validation of the correctness of issuance of CAR/TCL.

It is to be noted, however, that in case of sale of real property paid under installment payment or deferred payment basis, the payment of the documentary stamp tax (DST) shall accrue upon the execution of the Deed of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the Contract to Sell.

If upon completion of the payment of the purchase price of real property classified as ordinary asset, but before the execution of the Deed of Sale, the buyer decides to assign his right over the property to another person for a consideration, the assignment shall be considered a separate sale of real property and, therefore, subject to the creditable/expanded withholding tax (EWT) or final withholding of capital gains tax, as the case may be, which shall be withheld by the assignee of such property based on the consideration per Deed of Assignment or the fair market value of such property at the time of assignment, whichever is higher, and to the DST imposed under Sec. 196 of the same Code using the same basis.

It is to be clarified, however, that sale of interest in real property (real property purchased on installment covered by Contract to Sell which was sold by the original buyer before it was fully paid) shall be taxable on the part of the original buyer (now seller) based on the realized gain thereon which is measured by the difference between the agreed consideration and the amount actually paid by the said original buyer.

In connection thereto, Sec. 27(D)(5) of the NIRC of 1997, as amended, also provides that the 6% CGT is to be imposed on the gain presumed to have been realized on the sale, exchange or disposition based on either the gross selling price or fair market value of the real property sold whichever is higher. This *fair market value* is further defined under Sec. 6 (E) of the NIRC, as follows:

> **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -**
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> xxx xxx xxx
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> ***(E) Authority of the Commissioner to Prescribe Real Property Values.*** -The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon mandatory consultation with competent appraisers both from the private and public sectors, and with prior notice to affected taxpayers, determine the fair market value of real properties located in each zone or area, subject to automatic adjustment once every three (3) years through rules and regulations issued by the Secretary of Finance based on the current Philippine valuation standards: Provided, That no adjustment in zonal valuation shall be valid unless published in a newspaper of general circulation in the province, city or municipality concerned, or in the absence thereof, shall be posted in the provincial capitol, city or municipal hall and in two (2) other conspicuous public places therein: Provided, further, That the basis of any valuation, including the records of consultations done, shall be public records open to the inquiry of any taxpayer. [4] For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:
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> (1) The fair market value as determined by the Commissioner; or
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> (2) The fair market value as shown in the schedule of values of the Provincial and City Assessors.
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> xxx xxx xxx
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> **SEC. 27. *Rates of Income tax on Domestic Corporations.* -**
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> ***(A)*** xxx xxx xxx;

> ***(B)*** xxx xxx xxx;
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> ***(C)*** xxx xxx xxx
>
> ***(D) Rates of Tax on Certain Passive Incomes.*** –
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> ***(1)*** xxx xxx xxx
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> ***(2)*** xxx xxx xxx
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> ***(3)*** xxx xxx xxx
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> ***(4)*** 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 of 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 legal provisions, the 6% CGT paid in the instant case was based on the fair market value of the Properties which was higher than the selling price stated in the Contract to Sell. And the manner by which such payment was effected was through the withholding tax system whereby FDC, as the buyer, withheld the amount of P25,332,102.00 and remitted the same to the BIR, pursuant to Sec. 2.57.2 (J) of RR No. 2-98 as amended by RR 17-2003.

Thus, the payment of the CGT in the instant case was neither an erroneous or illegal collection of tax by the respondent.

Equity consideration cannot override the primary purpose of taxation as the lifeblood of civil society

A closer examination of the factual milieu of this case will show that although the petitioner is the statutory taxpayer of the CGT, the actual cash used to pay the same came from FDC, the buyer which withheld it from the purchase price and correspondingly remitted it to the BIR per the Certification from the BIR dated August 10, 2018.[40] Thus, with the rescission of the Contract to Sell, it was the seller, herein petitioner, that had the obligation to restitute the initial down

[40] Exhibits "R-1" and "R-2", BIR Records, pp. 1-2.

payment as well as the CGT advanced by the buyer on its behalf. It is the buyer that stands to suffer pecuniarily because the 2-year period to file a claim for refund has expired. So it is the buyer not the seller that can actually raise a howl based on equity.

As aptly ruled in the *San Miguel* case, "courts cannot resort to equity when there is clear statutory law governing the matter." Considering the clear and explicit provision of Section 229 of the 1997 NIRC, as amended, that refunds must be claimed within two years after the date of payment, regardless of any supervening cause that may arise after such payment, relaxing the rule on the mandatory nature of the prescriptive period for reasons of equity would be tantamount to overruling or supplanting the express provision of the law.[41]

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[41] *Technogas Philippines Manufacturing Corporation vs CIR*, CTA Case No. 9509 dated October 4, 2018 and upheld in *Technogas Philippines Manufacturing Corporation vs. CIR*, CTA EB No. 2002 dated November 26, 2019.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice