REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8598

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 28 2015
10:32 a.m.

X--X

DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review[1] filed by the Bases Conversion and Development Authority (BCDA) on January 4, 2013 seeking the refund of the amount of Twenty-Three Million Seven Hundred Fourteen Thousand Five Hundred Thirty-Seven Pesos and 86/100 (₱23,714,537.86), representing creditable withholding taxes (CWT) it allegedly paid under protest from January to December 2011 in connection with the sale or disposition of its allocated units or share in the "Serendra Project" located in Fort Bonifacio, Taguig City.

STATEMENT OF FACTS

Petitioner Bases Conversion and Development Authority is a government instrumentality vested with corporate powers, duly organized and existing by virtue of Republic Act (RA) No. 7227[2], as amended by RA No.

[1] *Docket*, Vol. I, pp. 6 to 24.
[2] Republic Act No. 7227, The Bases Conversion and Development Act of 1992.

7917[3], with office address at BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City.[4] It was created primarily for the following purposes:

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 specifically mentioned US bases.[5]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to carry out all the functions, duties and responsibilities of the head of the BIR, including the power to decide, approve, and grant claims for issuance of tax credit certificate or refund of erroneously paid or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2003, petitioner executed a Joint Development Agreement[6] (JDA) with Ayala Land, Inc. (ALI), where petitioner contributed a parcel of land located in Fort Bonifacio to undertake and complete the implementation of the project called the "Serendra Project". In return, the parties would receive their respective allocated units and net proceeds from the sale of said allocated units.[7]

To implement the JDA, petitioner and ALI executed a Trust Agreement[8] with the Development Bank of the Philippines (DBP) on February 13, 2004. Pursuant to the Trust Agreement, petitioner's allocated condominium units were registered under the name of DBP and were held in trust for the benefit of BCDA.

DBP received a letter[9] from BIR Revenue District Office (RDO) No. 44 on May 19, 2006, informing it that petitioner has been a registered taxpayer of the District starting January 1, 2006 under the name of "BCDA TA 11336 for Serendra Project" with "TIN 245-320-696-000".

[3] Republic Act No. 7917, An Act Amending Section 8 of Republic Act Numbered Seventy-two Hundred and Twenty-Seven, "Special Economic Act of 1993".
[4] *Docket*, p. 8, par. 2.1, Petition for Review.
[5] *Docket*, p. 10, par. 3.1, Petition for Review.
[6] *Docket*, pp. 2218-2279, Exhibit "A" to "A-2".
[7] *Docket*, pp. 2227 and 2232, pars. 2.2 and 2.6, Joint Development Agreement.
[8] *Docket*, pp. 2280-2305, Exhibit "B" to "B-3".
[9] *Docket*, p. 2306, Exhibit "C".

Consequently, petitioner wrote several letters to respondent, requesting confirmation that it is exempted from all taxes and fees, including CWT, on its share of the revenues collected from the joint development with ALI of the 12.6 hectare lot in Fort Bonifacio on which the Serendra Project is located.[10] It appears from the records that petitioner did not receive any reply from respondent.

Petitioner through its trustee, DBP, made a series of payments[11] under protest from January 11, 2011 until December 12, 2011, in the total amount of ₱23,714,537.86, representing the CWT on the sale of its condominium units in the project, as detailed below:

DATE OF PAYMENT[12]	TYPE OF TAX	SALE/ DISPOSITION	AMOUNT (₱)
January 11, 2011	CWT	Serendra Units	1,494,307.90
February 10, 2011	CWT	Serendra Units	249,075.00
February 10, 2011	CWT	Serendra Units	1,303,222.89
February 10, 2011	CWT	Serendra Units	1,676,886.25
March 1, 2011	CWT	Serendra Units	211,215.43
March 10, 2011	CWT	Serendra Units	538,942.22
April 11, 2011	CWT	Serendra Units	2,398,563.05
May 10, 2011	CWT	Serendra Units	3,281,488.84
May 13, 2011	CWT	Serendra Units	13,500.00
June 10, 2011	CWT	Serendra Units	1,057,501.50
June 17, 2011	Int. on CWT	Serendra Units	638,211.22
July 7, 2011	CWT	Serendra Units	1,501,662.24
July 21, 2011	CWT	Serendra Units	13,500.00
August 10, 2011	CWT	Serendra Units	2,667,806.09
September 8, 2011	CWT	Serendra Units	2,591,816.46
October 10, 2011	CWT	Serendra Units	368,313.24
November 10, 2011	CWT	Serendra Units	1,129,030.01
November 28, 2011	CWT	Serendra Units	11,520.00
December 12, 2011	CWT	Serendra Units	2,567,975.52
Total			**₱23,714,537.86**

Petitioner filed a letter[13] (with attachments) dated April 4, 2012 with respondent on April 23, 2012, claiming the refund of the amount of ₱23,714,537.86, representing alleged erroneously or illegally collected CWT in

[10] *Docket*, pp. 3026-3029, Exhibits "BB", "CC", and "DD".
[11] *Docket*, pp. 2733-2768, Exhibits "E" to "E-4", "F" to "F-1", "G" to "G-1", "H" to "H-1", "I" to "I-1", "J", "K" to "K-1", "L" to "L-1", "M", "N", "O", "P", "Q", "R", "R-1" to "R-2", "S", "S-1" to "S-2", "T" to "T-1", "U", "V", "W to "W-1", and "X".
[12] *Docket*, pp. 2769-3021, Exhibits "Y" to "Y-126" and "Z" to "Z-126".
[13] *Docket*, pp. 2307-2311, Exhibits "D" to "D-5".

connection with the disposition of the units owned by petitioner as its share in the Serendra Project.

Respondent failed to act on petitioner's claim for refund, forcing petitioner to file a Petition for Review[14] before this Court on January 4, 2013.

Respondent filed her Answer[15] on March 11, 2013, interposing the following Special and Affirmative Defenses:

> "**Petitioner is not exempt to pay taxes pursuant to Section 27 (C) of the National Internal Revenue Code of 1997, as amended.**
>
> 4. Petitioner, in its Petition for Review alleged that it is a government instrumentality that is vested with corporate powers duly organized and existing under and by virtue of Republic Act No. 7277 otherwise known as the Bases Conversion and Development Act of 1992.
>
> 5. By virtue of which, it likewise alleged that Section 8 of aforesaid RA 9227 as amended by RA 7917 intended the proceeds of its sale to be exempt from the payment of all forms of taxes. It alleged that Section 8 as amended by RA 7917 avers:
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> > 'The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.'
>
> 6. It bears stressing that RA 7917 was approved and enacted into law on 24 February 1995.
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> 7. Contrary to the aforesaid provision of law, respondent humbly manifests that with the advent of the NIRC of 1997, as amended, petitioner being a governmental entity, is liable to pay income tax pursuant to Section 27(C) thereof which explicitly provides:
>
> > 'C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. – **The provisions of existing special or general laws to**

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[14] *Docket*, pp. 6-24.
[15] *Docket*, pp. 459-468.

> **__the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government__**, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), **__shall pay such rate of tax upon their taxable income as are imposed by this Section__** upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis and underscoring supplied)

8. On the basis of the foregoing provision of law, it is crystal clear that petitioner, being a governmental instrumentality owned and controlled by the Government is liable to pay income tax. It is quite important to emphasize that this is notwithstanding any provision of existing special law like RA 7227. Hence, the NIRC of 1997 which was implemented in 1998 shall be supreme and remain in force over RA 7917 which took effect in 1995. As can be gleaned, the only government-run entities that are exempt from the payment of income tax are limited to GSIS, SSS, PHIC, PCSO and PAGCOR. Petitioner, not being one of those excluded from the coverage, is therefore, not exempt from the payment of income taxes.

9. It is basic precept in statutory construction that when the law is clear, the function of the courts is simple to apply the law. Time and again, where the law speaks in clear and categorical language, there is no room for interpretation, vacillation, or equivocation; there is room only for application.

10. In relation thereto, the NIRC of 1997, as amended by Republic Act No. 9337 on 1 July 2005 provides:

> Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> SEC. 27. Rates of Income Tax on Domestic Corporations. –
>
> xxx xxx xxx
>
> (C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. – **__The__**

> **provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government**, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), **shall pay such rate of tax upon their taxable income as are imposed by this Section** upon corporations or associations engaged in a similar business, industry, or activity.
>
> xxx xxx xxx
>
> SEC. 24. Repealing Clause. – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> xxx xxx xxx
>
> (C) **All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.**
>
> xxx xxx xxx
>
> SEC. Effectivity Clause. – This Act shall take effect on July 1, 2005. xxx xxx xxx
> (Emphasis and underscoring supplied)

11. Again, without sounding repetitious, by express provision of RA 9337, it is a glaring reality that government instrumentalities are still liable, to pay income tax. The only remaining four (4) institutions that are exempt to pay income tax are the GSIS, SSS, PHIC, and PCSO. Ergo, petitioner being a government instrumentality and not excluded from the exempt institutions, is still liable to pay the income taxes.

12. In the case entitled 'Florencio Eugenio vs. Secretary Franklin M. Drilon et al., the Supreme Court held:

> 'The intent of the law, as culled the situation, circumstances and conditions it sought to remedy, must be enforced. On this point, a leading authority on statutory construction stressed:
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> The intent of a statue is the law. . . .The intent is the vital part, the essence of the law, and the primary rule, of construction is to ascertain and give effect to the intent. **The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act.** . . . In construing statutes the proper course is to start out and follow the trite intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature. (Emphasis and underscoring supplied)

13. Corollary thereto, in Republic of the Philippines et al. vs. Carlito Lacap, the Supreme Court eloquently propounded:

> 'The 'plain meaning rule' or verba legis in statutory construction is that if the statue is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim Index animi sermo est (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. Verba legis non est recedendum, or from the words of a statute there should be no departure.'

14. In the case of Martin Centeno vs. Hon. Victoria Villalon-Pornillos et al., the Supreme Court had the occasion to say:

> 'Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim "expressio unius est exclusio alterius." Where a statute by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise **<u>that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.</u>** (Emphasis and underscoring supplied)

In a case for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

15. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

1. The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2. It must be shown on the return that the income received was declared as part of the gross income; and

3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

16. Accordingly, the burden of proof of compliance to substantiate its claim for refund or issuance of tax credit certificate is on the taxpayer to establish its right to refund, and failure to sustain burden is fatal to the claim for refund.

17. Equally important is for the petitioner to prove with certainty that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.

18. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

19. Basic is the rule that the tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

20. At the outset it must be pointed out that taxes remitted to the Bureau are presumed to have been made in the regular course of business and in accordance with provisions of law.

21. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

22. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. **Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.**

23. In an action for refund, **the burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted vague implications. The taxpayer is charged with the heavy burden of proving that he has complied

with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

24. Following the premise above-mentioned, **petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.**"

The case was set for pre-trial conference[16] on May 2, 2013. Petitioner's Pre-Trial Brief[17] was filed on April 26, 2013; while respondent's Pre-Trial Brief[18] was filed on April 24, 2013. However, the pre-trial conference was re-set to May 30, 2013.[19] The parties were given ten (10) days from May 30, 2013 or until June 9, 2013 within which to file their Joint Stipulation of Facts and Issues.[20]

The parties, however, failed to file their Joint Stipulation of Facts and Issues within the time granted by the Court.[21] Thereafter, the Court issued a Pre-Trial Order[22] on July 4, 2013, terminating the pre-trial.

Upon receipt of the Pre-Trial Order, petitioner filed an Urgent Motion for Extension of Time to File Comment[23], requesting an extension period of ten (10) days to file the appropriate motion/comment to the Pre-Trial Order; which was granted by the Court on July 10, 2013.[24]

On July 19, 2013, petitioner filed a Motion to Partially Amend Pre-Trial Order[25] to reflect the proposed adjusted schedule of hearing date. On July 23, 2013, petitioner filed a Motion to Admit Compliant Replacement Judicial Affidavits of Witnesses[26], praying that these be submitted in substitution of the Judicial Affidavits earlier submitted. The Court then ordered[27] respondent to comment on the said motions filed by petitioner within ten days from August 1, 2013. Respondent filed a Manifestation[28] interposing no objection to the motions earlier filed by petitioner. The Court issued an Amended Pre-Trial Order[29] on November 27, 2013.

[16] *Docket*, p. 470.
[17] *Docket*, pp. 476-488.
[18] *Docket*, pp. 471-474.
[19] *Docket*, p. 490.
[20] *Docket*, p. 1754.
[21] *Docket*, pp. 1755-1756.
[22] *Docket*, pp. 1763-1768.
[23] *Docket*, pp. 1769-1771.
[24] *Docket*, p. 1772, Order.
[25] *Docket*, pp. 1773-1776.
[26] *Docket*, pp. 1777-1780.
[27] *Docket*, p. 1828.
[28] *Docket*, pp. 1836-1838.
[29] *Docket*, pp. 1848-1853.

During trial, petitioner presented Ms. Hedda Lourdes Y. Rulona, the Department Manager for the Budget Department of BCDA; Atty. Edilberto R. Rebato Jr., Attorney VI at the Legal Services Department of the BCDA; Mr. Arrey A. Perez, Department Manager for the Financial Management Services Department of BCDA; and Mr. Paul Azura, Assistant Manager of the Trust Services of the DBP, as its witnesses.

Petitioner filed its Formal Offer of Evidence[30] on March 28, 2014. After the filing of respondent's Comment [31] on petitioner's Formal Offer of Evidence, the Court in a Resolution[32] dated May 29, 2014 admitted Exhibits "A" to "A-2", "B" to "B-3", "C", "D" to "D-5", "E" to "E-4", "F" to "F-1", "G" to "G-1", "H" to "H-1", "I" to "I-1", "J", "K" to "K-1", "L" to "L-1", "M", "N", "O", "P", "Q", "R", "R-1" to "R-2", "S", "S-1" to "S-2", "T" to "T-1", "U", "V", "W" to "W-1", "X", "Y" to "Y-126", "Z" to "Z-126", "AA" to "AA-3", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ" to "JJ-5", "KK", "LL", "LL-1", "MM", "MM-1", "MM-2", "MM-3", "MM-4", "MM-5", "MM-6", "MM-7", "MM-8", "MM-9", "MM-10", "MM-12", "MM-13", "MM-14", "P-1" to "P-1-A", "P-2" to "P-2-A", "P-3" to "P-3-A", and "P-4" to "P-4-A". In the same Resolution, the Court denied the admission of Exhibit "MM-11".

On the other hand, counsel for respondent manifested that the assigned revenue officer did not submit an audit report; hence respondent would no longer present any evidence.[33] The Court then issued a Resolution[34] on June 20, 2014, giving both parties a period of thirty (30) days from June 9, 2014 or until July 9, 2014 within which to file their respective memoranda.

Petitioner filed a Motion for Extension of Time to File Memorandum[35] and was granted by the Court in a Resolution[36] dated July 8, 2014. Petitioner later filed its Memorandum[37] via registered mail on August 8, 2014 which was received by the Court on August 14, 2014.

For her part, respondent filed a Motion for Extension of Time to File Memorandum [38] on July 8, 2014 which was granted by the Court in a Resolution [39] dated July 22, 2014. Afterwards, respondent filed her Memorandum[40] on August 13, 2014.

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[30] *Docket*, pp. 2200-2217.
[31] *Docket*, pp. 3463-3465.
[32] *Docket*, pp. 3469-3470.
[33] *Docket*, p. 3471.
[34] *Docket*, p. 3473.
[35] *Docket*, pp. 3474-3476.
[36] *Docket*, p. 3482.
[37] *Docket*, pp. 3504-3520.
[38] *Docket*, pp. 3477-3479.
[39] *Docket*, p. 3484.
[40] *Docket*, pp. 3487-3502.

After the filing of the parties' respective memoranda, this case was submitted for decision on August 18, 2014.[41]

THE ISSUES

Based on the arguments of the parties, the sole issue[42] is as follows:

Whether petitioner is entitled to a refund of ₱23,714,537.86, representing CWT it allegedly paid under protest in connection with the sale or disposition of its allocated units or share in the Serendra Project in 2011.

THE COURT'S RULING

Before resolving the principal issue, 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 National Internal Revenue Code (NIRC) of 1997, which provide:

> "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."
>
> "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

[41] *Docket*, p. 3540, Resolution.
[42] *Docket*, p. 1848, Amended Pre-Trial Order.

> 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)*

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. Section 204(C) applies to administrative claims filed with the BIR; on the other hand, Section 229 refers to judicial claims filed before the Court of Tax Appeals.

Both provisions set a two-year prescriptive period for the filing of a claim for refund or tax credit, reckoned from the date of payment of the tax or penalty. Thus, an administrative claim for refund or tax credit of erroneously, illegally, or excessively paid taxes and the subsequent filing of judicial claim must be made within two years from the date of payment of such tax.

The present claim pertains to erroneously paid creditable withholding taxes covering the period of January 11, 2011 to December 12, 2011. Applying Section 204(C) and Section 229 of the NIRC of 1997, both the administrative and the judicial claims must be filed on January 11, 2013.

As culled from the records, petitioner filed its administrative claim for refund with the BIR on April 23, 2012 and later filed a judicial claim before this Court on January 4, 2013. Evidently, both claims fell within the two-year prescriptive period.

The Court shall now determine whether or not petitioner is entitled to a refund in the amount of ₱23,714,537.86, representing CWT it allegedly paid under protest in connection with the sale or disposition of its allocated units or share in the Serendra Project.

Petitioner's exemption from taxes pursuant to Section 8 of RA No. 7227, as amended by RA No. 7917

Petitioner contends that it is exempt from payment of all forms of taxes including CWT and anchored its claim in Section 8 of RA No. 7227, as amended by RA No. 7917, which provides that:

> "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:
>
> '(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)*

In contrast, respondent argues that petitioner is not exempt from paying such taxes, basing her argument on Section 27(C) of the NIRC of 1997, as amended, to wit:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (C) *Government-owned or Controlled Corporations, Agencies or Instrumentalities.* – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity."

Respondent stresses that pursuant to the above provision, the only government-owned or controlled corporations exempt from payment of income tax are the GSIS, SSS, PHIC, and PCSO. Respondent states that the "plain meaning rule" or verba legis in statutory construction should be applied; if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. Thus, petitioner, being a government instrumentality and not among those enumerated as exempt institutions, is still liable to pay the income tax.

The Court agrees with respondent that the above provision does not state that petitioner is exempted from payment of income tax. It has been a constant and uniform holding that exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tested by this precept, the Court cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, the Court must go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more.[43] In other words, petitioner should be liable to pay income tax in accordance with Section 27(C) of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue vs. Bases Conversion and Development Authority*[44], the Court of Tax Appeals *En Banc* made a similar finding, to wit: ꟿ

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[43] *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, G.R. No. L-21841, October 28, 1966.
[44] CTA EB No. 1123, December 16, 2014.

"We agree with the petitioner on this point. It is an elementary principle that taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically and supported by a clear legal provision.

In the case at bar, nowhere in Section 27(C) of the 1997 Tax Code as amended by Republic Act Nos. 9337 and 10026 where respondent is listed as exempt from corporate income tax. This is founded on a basic precept of statutory construction that the express mention of one person, thing, or act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius.*

Ergo, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excluded, respondent Bases Conversion Development Authority must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim *exceptio firmat regulam in casibus non exceptis* [the express mention of exceptions operates to exclude other exceptions]."

However, Section 8 of RA No. 7227, as amended by RA No. 7917, 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. After all, 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.

Again, in *Commissioner of Internal Revenue vs. Bases Conversion and Development Authority*[45], the Court of Tax Appeals *En Banc* has clarified that even though herein 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 are quoted hereunder for ready reference:

"Pertinent to the resolution of this issue is Republic Act No. 7227, as amended by Republic Act No. 7917 of which Section 1 provides:

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

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:

(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:** x x x

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. (With emphasis)

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 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. x x x

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."

Respondent further argues that Section 27(C) of the NIRC of 1997 repealed the exemption granted to petitioner by RA No. 7227, as amended by RA No. 7917. Moreover, respondent contends that the NIRC of 1997, which was implemented in 1998, shall be supreme and remain in force over RA No. 7227, as amended by RA No. 7917, which took effect in 1995.

It is a well-established statutory construction rule that a special law prevails over a general law regardless of their dates of enactment; and the special law is to be considered as remaining an exception to the general law.[46]

It should be noted that the NIRC of 1997 is a general law, while RA No. 7227, as amended by RA No. 7917, is a special law, although it took effect way back in 1995. Accordingly, respondent's contention that the NIRC of 1997 shall be supreme and remain in force over RA No. 7917, which took effect in 1995, holds no water.

In addition, as laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to the same matter, unless the later act is either repugnant to the earlier one or fully embraces the subject matter thereof, or unless the reason for the earlier act is beyond peradventure renewed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier act.[47] This means that the legislature never intended RA No. 7227, as amended by RA No. 7917, to be repealed by the NIRC of 1997.

Based on the foregoing, petitioner shall not be liable to pay taxes, including CWT, on the proceeds of the sale or disposition of its allocated units or share in the Serendra Project pursuant to RA No. 7227, as amended by RA No. 7917, notwithstanding the fact that petitioner was not among those mentioned as exempt institutions in Section 27(C) of the NIRC of 1997, as amended.

Petitioner not entitled to a refund pursuant to Section 76 of the Tax Code

Respondent contends that petitioner marked the option "To be carried over as tax credit next year/quarter" in its 2011 Annual Income Tax Return

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[46] *Butuan Sawmill, Inc. vs. City of Butuan, et al.*, G.R. No. L-21516, April 29, 1966.
[47] *Smith, Bell & Co. vs. Estate of Maronilla, et al.*, G.R. No. L-8769, February 5, 1916.

(ITR)[48] and this shall be conclusive to show that it chose to carry over its excess credit and not the refund option. Respondent's basis is Section 76 of the NIRC of 1997, which states that:

> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

The Court finds respondent's argument meritorious. Scrutiny of the records shows that petitioner did not specifically admit nor deny that the amount of ₱23,714,537.86 being claimed for refund was included in Line 33F (Creditable Tax Withheld from Previous Quarter/s) of its Annual ITR amounting to ₱78,390,325.39[49]. It also bears stressing that, despite that the operations of petitioner resulting in a taxable loss in 2011, it incurred Minimum Corporate Income Tax (MCIT) amounting to ₱36,780,095.54, unto which the total creditable taxes were applied.[50]

It must be noted that Section 76 of the NIRC of 1997 states that an option to carry-over the excess credit shall be irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. Despite the exemption granted to petitioner, the evidence clearly shows that the amount claimed to be refunded has been

[48] *Docket*, pp. 3051-3056, Exhibits "JJ" to "JJ-5".
[49] *Docket*, p. 3055, Exhibit "JJ-4".
[50] *Docket*, p. 3054, Exhibit "JJ-3".

included in the current year creditable taxes reported in the ITR which could be applied to the income tax due and eventually be carried over to the following years.

Having indicated its option to carry-over, petitioner made its choice and is thereby bound by the irrevocability rule. Petitioner cannot benefit twice. One, in the event the refund is granted; and, two, when the same amount is credited against future income tax due. This situation would indubitably result in damage to and prejudice of the government.

WHEREFORE, premises considered, petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice