REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTERNATIONAL EXCHANGE BANK,
Petitioner,

C.T.A. EB No. 370
(C.T.A. Case No. 7343)

-versus-

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 0 9 2008 GA Apolinario
2:05 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on March 14, 2008, praying for the reversal of:

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[1] *Rollo*, pp. 8 - 141 with Annexes.

1. the Decision dated October 18, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7343, dismissing the Petition for Review filed by petitioner for lack of merit, thereby, affirming with some modifications the Decision of the Commissioner of Internal Revenue ("CIR") dated August 31, 2005, and ordering petitioner to pay respondent deficiency interest and surcharge for the late payment of creditable/expanded withholding taxes ("CWT") and documentary stamp taxes ("DST") in the total amount of P596,959.01, relative to the foreclosure sale of real property in year 2000, which was later redeemed by Lippo, Inc. ("mortgagor/owner"), plus 20% delinquency interest from October 7, 2005, until fully paid pursuant to Section 249 of the 1997 National Internal Revenue Code ("NIRC"); and
2. the Resolution dated February 11, 2008, denying petitioner's Motion for Reconsideration.

Antecedent Facts

The facts of the case, as found by the Court in Division, are as follows:

> "International Exchange Bank (petitioner) is a commercial banking corporation duly organized and existing under Philippine laws, with principal office address at 142 Amorsolo Street, Legaspi Village, Makati City.

Commissioner of International Revenue (respondent) is the official authorized under Section 4 of the National International Revenue Code of 1997 (1997 Tax Code) to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court.

On January 27, 1997, Lippo Incorporated (Lippo), as security for the loan of Mr. William Siy and/or Willsan Plastic and Printing Manufacturing in the sum of Ten Million (P10,000,000.00), mortgaged in favor of petitioner its real property covered by TCT No. 221251 of the Register of Deeds in Manila, as evidenced by a real estate mortgage contract between them.

Due to the failure of Lippo to pay the aforesaid loan, petitioner extra-judicially foreclosed the real estate mortgage. Petitioner, as the highest bidder, purchased the same at the public auction sale held on March 8, 1999, for which petitioner was issued a Certificate of Sale.

The Certificate of Sale was registered with the Register of Deeds on April 15, 1999.

On March 22, 2000, before the lapse of the redemption period, Lippo filed a complaint for the declaration of nullity of foreclosure sale (with application for writ of preliminary injunction) before the Regional Trial Court (RTC) of Manila, Branch 26.

On April 26, 2000, after the redemption period lapsed, petitioner consolidated its title over the subject property. Consequently, the Registry of Deeds of Quezon City issued a new title (Transfer Certificate Title N-212412) in petitioner's name.

On May 17, 2000, the RTC of Manila granted Lippo's petition for preliminary injunction and ordered the issuance of a writ of preliminary injunction.

On October 25, 2000, petitioner filed with the BIR the appropriate returns and paid the expanded withholding tax (EWT) in the amount of P712,500.00 and documentary stamp tax (DST) in the amount of P142,500.00 due from the foreclosure sale.

On October 28, 2002, Regional Director Ruperto Somera of the BIR Revenue Region No. 6 of Manila issued a Preliminary

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Assessment Notice (PAN) requiring petitioner to pay the amounts of P521,905.00 and P110,054.01, representing alleged increments for late payment of EWT and DST, respectively, in connection with the extra-judicial foreclosure sale.

In a letter dated January 21, 2003 addressed to Director Somera, petitioner requested for the recall and/or cancellation of the aforesaid PAN and posited the view that petitioner is not liable for any tax in connection with the foreclosure sale on the ground that the transfer of beneficial ownership over the foreclosed property was never effected or consummated. It also argued that by reason of the injunction issued, petitioner was prohibited and prevented from consolidating title over the foreclosed property. Besides, by virtue of the redemption by Lippo of the subject property, there is no transaction that is subject to tax.

In its Decision dated March 11, 2003, based on the Compromise Agreement executed between the parties, the RTC of Manila allowed Lippo to redeem the subject property after payment of the redemption price, or the amount equivalent to the outstanding balance of the loan secured by the subject property.

Pursuant to the order of the RTC of Manila dated March 11, 2003, a Certificate of Redemption was executed by petitioner in favor of Lippo on March 14, 2003.

In reply to petitioner's letter dated January 21, 2003, Regional Director Somera wrote petitioner a letter dated July 4, 2003, reiterating the BIR position that the imposition of penalties and interest for late payment of taxes was proper. The Regional Director also requested petitioner to immediately settle its tax liabilities.

On August 4, 2003, petitioner filed an administrative protest with respondent, who indorsed the same to the RDO of Manila. Subsequently, on October 22, 2003, the Regional Director of BIR Revenue Region No. 6, Manila sent petitioner a letter and informed the latter that its protest was referred to the Chief of BIR Legal Division, who rendered an opinion in favor of the imposition of the deficiency taxes, penalty and surcharge. Again, the Regional Director requested petitioner to settle its tax liability.

On January 20, 2004, petitioner filed with the BIR Appellate Division a Motion for Reconsideration. However, in a Decision promulgated on August 31, 2005, respondent denied petitioner's request for reconsideration of the denial by the RDO of Manila of its protest and ordered petitioner to pay the deficiency interest and surcharge for late payment of expanded withholding and documentary stamp taxes due on the foreclosure sale of the subject property, plus increments that have accrued until the actual date of payment.

Hence, on October 18, 2005, petitioner filed before this Court a Petition for Review.

The parties agreed to submit the following issues for this Court's resolution:

> '1. Whether or not petitioner realized any profit or gain arising from the foreclosure sale and the subsequent redemption of the property by "Lippo," that would result to the payment of expanded withholding tax and documentary stamp taxes?
>
> 2. Whether or not there was a valid foreclosure sale, exchange or disposition of the property in favor of petitioner that is subject to expanded withholding tax and documentary stamp tax, notwithstanding that there are legal issues raised before the Regional Trial Court of Manila assailing the validity of the foreclosure sale itself and the presence of legal impediments (writ of Preliminary Injunction was issued by the said court) prohibiting petitioner from consolidating title over the foreclosed property.
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> 3. Whether or not petitioner should be made liable for payment of the expanded withholding tax and documentary stamp tax in the instant case, despite an express provision in the Judgment based on Compromise Agreement requiring "Lippo" to assume the taxes attendant to the redemption of the Subject Property?
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> 4. Whether or not the institution of an action for the annulment of the foreclosure sale will stop the running of the one year period of redemption.
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> 5. Whether or not revenue regulations no. 4-99 is applicable in the case at bar.'"[2] *(Citations omitted)*

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[2] *Rollo*, pp. 31 – 35, Assailed Decision dated October 18, 2007, pp. 2 – 6.

The Ruling of the Court in Division

On October 18, 2007, the Court in Division dismissed the Petition for Review filed by petitioner on October 18, 2005, praying for the cancellation of Demand No. 29-(6-30-2000) dated May 8, 2003 involving deficiency interest and surcharge assessments in the amounts of P521,905.00 and P110,054.01, respectively.

The Court in Division resolved the first and third issues jointly. It rejected the argument of petitioner that it should not be made liable to pay the CWT and DST since it has no income or gain from the sale of the foreclosed property. Citing the case of *Vive Eagle Land, Inc. and Virgilio O. Cervantes v. Court of Appeals and Genuine Ice Co., Inc., G.R. No. 150308, November 26, 2004,* the Court in Division pointed out that capital gains tax is a tax on the **presumed gain** from the sale or exchange of real property. In the case of a foreclosure sale of mortgage, the consideration would be the satisfaction fully or partly of the pre-existing indebtedness secured by the mortgage.

The Court in Division further explained that under Section 6 of Act 3135, as amended by Act 4118 and Section 33 of Rule 39 of the 1997 Revised Rules of Court, redemption may be made within one year from the registration of the Certificate of Sale with the Register of Deeds. In this case, since the registration of the Certificate of Sale covering the foreclosed property was registered with the concerned Register of Deeds on April 15, 1999, the period of redemption is considered to have expired on April 15, 2000. And since the redemption period lapsed without Lippo exercising its redemption rights, petitioner is deemed to have consolidated ownership over the subject property.

Moreover, the Court in Division expressed the view that the stipulation in the Compromise Judgment that Lippo should bear all costs attendant to the redemption of the property, including applicable taxes, pertains only to taxes incidental to the redemption of the property and not those which became due and were paid before the Compromise Judgment was rendered.

Anent the second and fourth issues, the Court in Division ruled that the institution of an action for the annulment of the foreclosure sale and preliminary injunction did not stop the running of the period of redemption. Neither did it prohibit petitioner from consolidating title over the foreclosed property. It also added that since the Compromise Judgment did not state that the foreclosure sale is void, there is no reason for the Court in Division to render a different opinion doubting its validity in the absence of evidence to the contrary.

Thus, the Court in Division declared that since there was no redemption made during the one-year redemption period, the tax liability legally accrued as of that moment, regardless of whether the petitioner was prevented at a later date by the trial court's Writ of Preliminary Injunction to consolidate its title over the foreclosed property.

Finally, the Court in Division resolved the last issue in favor of the respondents by holding Revenue Regulations No. 4-99 ("RR 4-99") applicable in the instant case. Considering that petitioner filed the tax returns and paid the taxes only on October 25, 2000 or after the expiration of the redemption period, the Court in Division found petitioner liable for increments as provided under Sections 248 and 249 of the NIRC for failure to file the returns and pay the taxes within the prescribed period.

In view of the foregoing, the Court in Division disposed of the case in this wise:

> "**WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, respondent's August 31, 2005 Decision is hereby **AFFIRMED** with modifications and petitioner is hereby **ORDERED to PAY** surcharges and interests, computed as follows:

	DST	EWT
Surcharge (Sec. 248)	P35,625.00	P178,125.00
Interest 5/11/00-4/30/02	64,429.01	318,780.00
Amount Due	P100,054.01	P496,905.00

> The compromise penalty, in the amounts of P10,000 for DST and P25,000 for EWT, are cancelled in the absence of a mutual agreement by the parties. Petitioner is likewise **ORDERED to PAY** 20% delinquency interest from October 7, 2005, until fully paid pursuant to Section 249 of the Tax Code.
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> **SO ORDERED.**"[3]

[3] *Rollo*, pp. 44 – 45, Assailed Decision dated October 18, 2007, pp. 15 - 16.

On November 23, 2007, petitioner filed a "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007."[4] In the Motion, petitioner stated that it received a copy of the Decision dated October 18, 2007 on October 26, 2007. Accordingly, petitioner had until November 12, 2007 within which to file its Motion for Reconsideration considering that the fifteenth day, November 10, 2007, fell on a Saturday. However, due to oversight and inadvertence, petitioner was able to file the Motion for Reconsideration only on November 23, 2007. For this reason, petitioner prayed that its Motion for Reconsideration[5] be admitted.

In turn, respondent filed a Comment[6] to which petitioner filed a Reply.[7]

On February 1, 2008, petitioner also filed a "Motion to Suspend Collection of Tax."[8]

On February 11, 2008, the Court in Division thumbed down the "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007" for lack of merit, pursuant to Rule 15 of the Revised Rules of the Court of Tax Appeals which provides the aggrieved party a period of fifteen days from receipt of a copy of the decision within which to file a Motion for Reconsideration. The Court in Division enunciated the

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[4] *Rollo*, pp. 47 - 50.
[5] Attached to the "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007;" *Id.*, pp. 51 – 58.
[6] *Records*, C.T.A. Case No. 7343, pp. 298 – 301.
[7] *Id.*, pp. 311 – 314.
[8] *Id.*, pp. 302 – 309.

settled jurisprudential principle that just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor.[9]

Thereafter, on February 29, 2008, the Court in Division issued a Resolution[10] denying the "Motion to Suspend Collection of Tax" for being moot and academic, in view of the denial of petitioner's "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007."

The Issues

Hence, the present recourse where petitioner contends that:

"A. THE HONORABLE SECOND DIVISION ERRED IN DENYING PETITIONER'S 'MOTION FOR LEAVE OF COURT TO ADMIT THE MOTION FOR RECONSIDERATION' WHICH EFFECTIVELY DEPRIVED THE PETITIONER OF ITS RIGHT TO BE HEARD ON ITS MERITORIOUS ARGUMENTS.

B. LEGAL IMPEDIMENTS PREVENTED PETITIONER FROM CONSOLIDATING TITLE OVER THE SUBJECT PROPERTY, AS A RESULT THEREOF, OWNERSHIP OVER THE SAME WAS NOT CONSUMMATED. SUCH BEING THE CASE, ANY PAYMENT OF CREDITABLE WITHHOLDING TAX AND DOCUMENTARY STAMP WHICH MAY BE DUE ON THE FORECLOSURE SALE IS PREMATURE, INAPPROPRIATE AND ERRONEOUS.

C. PETITIONER DID NOT EARN ANY INCOME FROM THE TRANSACTION HENCE, IT SHOULD NOT BE MADE LIABLE TO PAY THE CWT, DST, AS WELL AS

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[9] *Rollo*, pp. 59 - 61.
[10] *Records*, C.T.A. Case No. 7343, p. 320.

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SURCHARGES AND INTERESTS CORRESPONDING THERETO.

D. NEITHER WAS THE SALE CONSUMMATED NOR TRANSFER OF BENEFICIAL OWNERSHIP OVER THE SUBJECT PROPERTY WAS EFFECTED SINCE RIGHT OF REDEMPTION HAS BEEN EXERCISED BY LIPPO INC., AS MORTGAGOR, HENCE, NO CWT AND DST SHOULD HAVE BEEN PAID BY THE PETITIONER.

E. ON THE ASSUMPTION THAT CWT AND DST ARE DUE ON THE TRANSACTION, IT IS LIPPO AND NOT THE PETITIONER WHO IS LIABLE FOR THE ALLEGED DEFICIENCY TAXES."[11]

These assignment of errors may be summed up into two main issues, to wit:

(1) Whether or not the "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007" filed by petitioner was correctly denied by the Court in Division; and

(2) Whether or not petitioner is liable for the deficiency interest and surcharge for the late payment of CWT and DST, relative to the foreclosure sale of a real property in the year 2000, which was later redeemed by its mortgagor/owner.

[11] *Rollo*, pp. 15 - 16.

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Petitioner's Arguments

Petitioner contends that the Court in Division deprived it of due process when it strictly adhered to technical rules and brushed aside petitioner's "Motion for Leave to Admit the Motion for Reconsideration dated 08 November 2007."

Petitioner insists that it is not liable for the deficiency interest and surcharge for the alleged late payment of CWT and DST, relative to the foreclosure sale of a real property in the year 2000, which was later redeemed by its mortgagor/owner. It claims that it did not earn any income or gain from the sale because the mortgagor/owner was able to redeem the subject property.

Moreover, petitioner is of the view that the filing by the mortgagor/owner of an action to annul the foreclosure sale with prayer for the issuance of a temporary restraining order and/or injunction before the Regional Trial Court of Manila, Branch 26, docketed as Civil Case No. 00-96863, prevented the expiration of the one-year redemption period. It considers the filing of the action twenty-nine (29) days prior to the expiration of the one-year period as a legal impediment which prevented it from consolidating title over the subject property.

Finally, petitioner argues that assuming that CWT and DST are payable on the subject transaction, it is the mortgagor/owner, that should be liable and not petitioner pursuant to the Compromise Agreement entered into by the petitioner and the mortgagor/owner.

Respondent's Counter-arguments

Respondent counter-argues that the Court in Division did not err in denying petitioner's "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007," as the same was filed thirteen (13) days late. For this reason, respondent contends that petitioner has lost its right to appeal and, therefore, is proscribed from filing the instant Petition for Review.

Respondent maintains her stand that petitioner is liable for the deficiency interest and surcharge for the late payment of CWT and DST. She claims that the period of redemption of the foreclosed property expired on April 15, 2000 without the right of redemption being exercised by the mortgagor/owner. Hence, at that time, petitioner became entitled to both the conveyance and possession of the foreclosed property as a matter of right, and consequently, became liable for the payment of taxes due on the foreclosure.

Respondent opposes the claim of petitioner that there was a legal impediment prohibiting petitioner from consolidating title over the foreclosed property, by pointing out that the Preliminary Injunction was issued by the trial court only on May 17, 2000 or a month and two days after the expiration of the redemption period.

The Ruling of the Court En Banc

The Petition for Review must fail.

The Court in Division did not err in denying petitioner's "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007"

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals states that:

> "SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." *(Emphasis supplied)*

In this case, petitioner received a copy of the Decision dated October 18, 2007 on October 26, 2007. Accordingly, petitioner had fifteen (15) days from receipt of the said Decision or until November 10, 2007 within which to file a Motion for Reconsideration. However, it was only on November 23, 2007 that petitioner filed its "Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007."

This procedural lapse of petitioner did not toll the running of the reglementary period. Consequently, the assailed Decision has become final and executory due to petitioner's own failure to seasonably file a Motion for Reconsideration.

Basic is the rule that the 15-day reglementary period for the filing of a motion for reconsideration is mandatory and jurisdictional.[12] Thus, We find no error on the part of the Court in Division in denying the Motion filed by petitioner.

On this ground alone, the instant Petition for Review must therefore be dismissed. Nevertheless, to set the matters at rest, We shall delve into the other arguments raised by petitioner.

Petitioner is liable for deficiency interest and surcharge for the late payment of CWT and DST

The main disagreement between the parties centers on whether there was a legal impediment which prevented petitioner from consolidating title over the subject property.

Petitioner strongly believes that it is under no obligation to pay the corresponding taxes relative to the foreclosure sale, for the reason that the filing by the mortgagor/owner of an action to annul the foreclosure sale twenty-nine (29) days prior to the expiration of the one-year period to redeem prevented petitioner from consolidating title over the subject property.

Respondent, on the other hand, maintains its stance that the filing of an action to annul the foreclosure sale did not prevent petitioner from

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[12] Suarez v. Villarama, G.R. No. 124512, 493 SCRA 74, June 27, 2006, *citing Manipor v. Ricafort, 454 Phil. 825, 832 (2003) citing Sy Chin v. Court of Appeals, 345 SCRA 673, 681 (2000), citing Laza v. Court of Appeals, 336 Phil. 631 (1997).*

consolidating the title of the subject property, as the Writ of Injunction was issued on May 17, 2000 or a month and two days after the expiration of the redemption period. Hence, there was no legal impediment to speak of.

We agree with respondent.

We have ruled in many cases,[13] that in a foreclosure sale, the transfer of ownership ensues only upon the expiration of the redemption period, as provided in Section 6 of Act No. 3135.[14]

Section 6 of Act No. 3135 provides that:

> "SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, **may redeem the same at any time within the term of one year from and after the date of the sale;** and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act." *(Emphasis supplied)*

Relative thereto, Section 33 of Rule 39 of the 1997 Revised Rules of Court reads:

> "SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — **If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property;** or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and

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[13] International Exchange Bank v. Commissioner of Internal Revenue, C.T.A. Case No. 6225, February 19, 2002; Panay Island Water Crystal Storage Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6164, October 2, 2001; Spouses Francis Go and Edna San Gabriel Go v. Commissioner of Internal Revenue, C.T.A. Case No. 5875, December 1, 1999; and Spouses Arturo Soriano and Virginia T. Soriano v. Commissioner of Internal Revenue, C.T.A. Case No. 5563, June 22, 1999.

[14] "An Act To Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages."

> notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.
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> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor." *(Emphasis supplied)*

Indeed, redemption may be made within one year from the date of registration of the Certificate of Sale with the Register of Deeds. However, if no redemption is made within one year, the purchaser is entitled as a matter of right, to consolidate and to possess the property,[15] and therefore, becomes liable for the taxes accruing as a result thereof.

In this case, the Certificate of Sale was registered with the Register of Deeds on April 15, 1999. Hence, the mortgagor/owner had until April 15, 2000 within which to redeem the foreclosed property. Considering that no redemption was made during the one-year period, the EWT and DST legally accrued as of that moment.

The filing of an action to annul the foreclosure sale prior to the expiration of the redemption period, and the subsequent issuance of a Writ

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[15] Development Bank of the Philippines v. Court of Appeals, G.R. No. 111737, 316 SCRA 650, October 13, 1999.

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of Preliminary Injunction on May 17, 2000 by the trial court where the action was pending, did not toll the running of the redemption period.

Jurisprudence has consistently declared that the filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the property, nor bar the purchaser at public auction from procuring a writ of possession after the statutory period of redemption had lapsed, without prejudice to the final outcome of such complaint to enforce the right of redemption.[16]

Furthermore, the one-year period to redeem a mortgage of land covered by Torrens Title is not stopped or suspended by any TRO issued by the courts. In fact, there is no statute or decision which supports the contention that the period of one year to redeem a land sold at public auction is suspended by the institution of an action to annul the foreclosure sale.[17]

As to the contention of petitioner that it did not earn any income or gain from the sale of the foreclosed property, We find the same bereft of merit. We need not belabor that capital gains tax is a tax on the presumed gain derived from the sale or exchange of real property. In the case of a foreclosure sale of mortgage, the consideration is the satisfaction fully or partly of the pre-existing indebtedness secured by the mortgage.

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[16] Spouses Antonio S. Pahang and Lolita T. Pahang v. Hon. Augustine A. Vestil, G.R. No. 148595, 434 SCRA 139, July 12, 2004.

[17] People's Financing Corporation, et. al. v. Court of Appeals, G.R. No. 80791, 192 SCRA 34, December 4, 1990, *citing Sumerariz v. Development Bank of the Philippines, No. L-23764, 21 SCRA 1374 , December 26, 1967.*

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Neither do We find tenable the reasoning of petitioner that no sale or transfer of property was realized since the right of redemption has been exercised by the mortgagor/owner.

It bears stressing that the foreclosed property was redeemed pursuant to a Compromise Agreement executed long after the expiration of the one-year redemption period. Hence, contrary to the claim of petitioner, there was already an actual transfer of property.

In this connection, We find it fitting to mention the observation of the Court in Division and the respondent that, "if petitioner did not in fact consolidate ownership on said property, it would have nothing to alienate on the Compromise Agreement it entered into with Lippo. *Nemo dat quod non habet*. One cannot alienate things which one does not own."[18]

Furthermore, the stipulation in the Compromise Agreement, stating that the mortgagor/owner shall bear all costs attendant to the redemption of the property, including applicable taxes, would not also relieve petitioner of its liability. As aptly pointed out by the Court in Division, the taxes referred to in the Compromise Agreement are the taxes incidental to the redemption of the property and not those which became due and were paid before the Compromise Agreement was rendered.[19]

[18] *Rollo*, p. 41, Assailed Decision dated October 18, 2007, p. 12.
[19] *Id.*, p. 38, Assailed Decision dated October 18, 2007, p. 9.

On top of these, petitioner knowingly and voluntarily paid the EWT and DST due on the foreclosure sale of March 8, 1999. This to Us is a clear indication that petitioner knew of the existence of its tax liability, and has in fact, recognized the same.

All told, the claim of petitioner that it is not liable for the deficiency interest and surcharge for the late payment of CWT and DST holds no water.

Based on the records, petitioner paid the EWT in the amount of P712,500.00 and DST in the amount of P142,500.00 only on October 25, 2000 or several months after the expiration of the redemption period.[20] Clearly, petitioner failed to file the returns and pay the taxes within the prescribed period provided for in Sections 3 and 4 of RR 4-99, to wit:

> "SECTION 3. Capital Gains Tax. –
>
> (1) In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. A certification to that effect or the deed of redemption shall be filed with the Revenue District Office having jurisdiction over the place where the property is located which certification or deed shall likewise be filed with the Register of Deeds and a brief memorandum thereof shall be made by the Register of Deeds on the Certificate of Title of the mortgagor.
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> (2) **In case of non-redemption**, the **capital gains tax on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due** based on the bid price of the highest bidder **but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135,**

[20] *Records*, C.T.A. Case No. 7343, p. 157, Joint Stipulation of Facts and Issues, p. 4.

as amended by Act No. 4118, and **shall be paid within thirty (30) days from the expiration of the said one-year redemption period.**

SECTION 4. Documentary Stamp Tax. –

(1) In case the mortgagor exercises his right of redemption, the transaction shall only be subject to the P15.00 documentary stamp tax imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) **In case of non-redemption**, the corresponding **documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines**; Provided, That whenever one party to the taxable document enjoys exemption from the tax, the other party thereto who is not exempt shall be the one directly liable for the tax. **The tax return prescribed under the Code shall be filed within ten (10) days after the close of the month following the lapse of the one-year redemption period, and the tax due under Sec. 196 of the Tax Code of 1997 shall be paid based on the bid price at the same time the aforesaid return is filed.** *(Emphasis supplied)*

For failing to file the returns and pay the taxes within the prescribed period, petitioner is liable for increments, pursuant to Sections 248 and 249 of the NIRC. Sections 248 and 249 state that:

"SEC. 248. Civil Penalties. –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or xxx.

SEC. 249. Interest. –

(A) In General. – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. xxx"

In sum, We find no cogent justification to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated October 18, 2007 and the Resolution dated February 11, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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