REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

MR. URBANO L. VELASCO,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE (REVENUE REGION NO. 8, RDO 047, MAKATI CITY),
Respondent.

CTA CASE NO. 8497

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

AUG 08 2016 · 3:25 pm.

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RESOLUTION

***DEL ROSARIO, P.J.*:**

This resolves respondent's Motion for Reconsideration filed through registered mail by respondent on June 3, 2016 and received by this Court on June 17, 2016, with petitioner's Comment/Opposition thereto filed on July 13, 2016.

The present Motion for Reconsideration of respondent assails the Court's Decision dated May 17, 2016 and prays that it be reconsidered and set aside. The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, premises considered, the Petition for Review of petitioner Mr. Urbano L. Velasco is **GRANTED**. Accordingly, the Formal Assessment Notice, Preliminary Collection Letter, and the Warrant of Distraint and/or Levy issued against petitioner are **CANCELLED**. Respondent is **ORDERED** to issue Tax Clearance Certificate relating to petitioner's sales of stock transactions with Gervel Inc. and Metropolitan Management Corporation on September 12, 2008.
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> **SO ORDERED**.

Respondent claims that the assailed Decision is contrary to applicable law, rules and regulations. In support thereof, respondent asserts *(i)* that nowhere can it be found in Section 103 or in any sections under the Donor's Tax provision of the NIRC that if a transaction subject to both capital gains tax and donor's tax, the filing of a CGT Return would mean compliance with the mandate of filing a Donor's Tax Return, and would exempt as well the taxpayer with the requirement of filing the corresponding Donor's Tax Return and payment of the corresponding donor's tax due thereon; *(ii)* that petitioner is mandated by law to file both the CGT Return and Donor's Tax Return in connection with the sale of shares of stock below their book value; *(iii)* that the ten (10) year prescriptive period under Section 222 of the NIRC, as amended shall apply in this case for petitioner's failure to file the corresponding Donor's Tax Return; and *(iv)* that Court's declaration that petitioner's filing of CGT Return constitutes sufficient compliance with the requirement of filing a Donor's Tax Return is erroneous as the case of *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.*[1] *(BF Goodrich)* relied upon by the Court is merely an *obiter dictum* and the issue involved therein is about *"false return and/or fraudulent return"* and not about *"failure to file return."*

In his Comment/Opposition, petitioner counter-argues that the issues and arguments raised in the Motion are mere rehash of what had been passed and ruled upon by the Court; that the provision of Section 203 of the NIRC, as amended, applies to this case, and not the provision of Section 222 of the NIRC, as amended; and that respondent failed to overcome the Court's reliance on the ruling of the Supreme Court in *BF Goodrich* case.

The Motion for Reconsideration must fail.

Respondent may have failed to fully grasp the ratiocination in the assailed Decision. Foremost, the assailed Decision is plain and categorical in declaring that the amount considered as a gift on sale of shares of stocks for less than its book value/fair market value is subject to donor's tax pursuant to Section 100 of the NIRC of 1997, as amended, in relation to Revenue Regulations No. 6-2008 and as exemplified in *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue.*[2] The Court, however, concluded that while there exists a donation by fiction of law and the correlative duty to pay the

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[1] G.R. No. 104171, February 24, 1999.
[2] G.R. No. 210987, November 24, 2014.

donor's tax due thereon, petitioner is entitled to the cancellation of the disputed deficiency assessment on the ground that the three-year prescriptive period to assess tax under Section 203 of the NIRC, as amended, had already set-in.

Respondent's insistence for the application of the ten-year prescriptive period under Section 222 of the NIRC, as amended, instead of the three-year prescriptive period, on account of petitioner's failure to file a Donor's Tax Return is bereft of merit.

The Court already addressed said issue in the assailed Decision that the filing of petitioner's CGT Return relating to the same share of stocks transactions constitutes sufficient compliance with the requirement of filing of a Donor's Tax Return for purposes of settling the issue of prescription of the disputed deficiency donor's tax consistent with the pronouncement of the Supreme Court in *BF Goodrich*.

Lastly, the contentions of respondent that *BF Goodrich* case is merely an *obiter dictum* and the alleged diversity of issue involved in that case and this case are likewise devoid of merit.

There is no question that *obiter dictum* is not a binding precedent.[3] An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of res judicata.[4]

It has been held, however, that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although

[3] Villanueva, Jr. vs. Court of Appeals, G.R. No. 142947, March 19, 2002.
[4] Land Bank of the Philippines vs. Suntay, G.R. No. 188376, December 14, 2011.

only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.[5]

Based on the foregoing principles of law, the Court finds that the pronouncement in *BF Goodrich* case is not just an *obiter dictum* as it touched upon a matter clearly raised in the *Petition for Review on Certiorari* before the Supreme Court.

In that case, BF Goodrich was assessed in 1980 and 1981 of deficiency donor's tax in relation to its sale of Basilan landholdings to Siltown Realty Philippines, Inc. in 1974 as the BIR deemed the consideration for such sale as insufficient, and the difference between the fair market value and the actual price as taxable donation. One of the questions brought before the Supreme Court is whether or not petitioner's right to assess deficiency donor's tax has prescribed. Ancillary thereto is the question of whether BF Goodrich filed a fraudulent return or failed to file a return. In resolving the foregoing questions, the Supreme Court ruled the following:

"Main Issue: *Prescription*

xxx xxx xxx

[5] Villanueva, Jr. vs. Court of Appeals, G.R. No. 142947, March 19, 2002.

Section 331 of the National Internal Revenue Code provides:

> SEC. 331. *Period of limitation upon assessment and collection.* Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

Applying this provision of law to the facts at hand, it is clear that the October 16, 1980 and the March 1981 **assessments were issued by the BIR beyond the five-year statute of limitations**. The Court has thoroughly studied the records of this case and found no basis to disregard the five-year period of prescription. As succinctly pronounced by the Court of Appeals:

> The subsequent assessment made by the respondent Commissioner on October 10, 1980, modified by that of March 16, 1981, violates the law. **Involved in this petition is the income of the petitioner for the year 1974**, the returns for which were required to be filed on or before April 15 of the succeeding year. **The returns for the year 1974 were duly filed by the petitioner, and assessment of taxes due for such year -- <u>including that on the transfer of properties</u> on June 21, 1974 -- was made on April 13, 1975** and acknowledged by Letter of Confirmation No. 101155 terminating the examination on this subject. The subsequent assessment of October 10, 1980 modified, by that of March 16, 1981, was made beyond the period expressly set in Section 331 of the National Intenal Revenue Code xxx.
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> xxx xxx xxx

Nor is petitioners claim of falsity sufficient to take the questioned assessments out of the ambit of the statute of limitations. The relevant part of then Section 332 of the NIRC, which enumerates the exceptions to the period of prescription, provides:

> SEC. 332. *Exceptions as to period of limitation of assessment and collection of taxes.* -- (a) In the case of a false or fraudulent return with intent to evade a tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: xxx.

Petitioner insists that private respondent committed falsity when it sold the property for a price lesser than its declared fair market value. This fact alone did not constitute a false return which contains wrong information due to mistake, carelessness or ignorance. It is possible that real property may be sold for less than adequate consideration for a *bona fide* business purpose; in such event, the sale remains an arms length transaction. In the present case, the private respondent was compelled to sell the property even at a price less than its market value, because it would have lost all ownership rights over it upon the expiration of the parity amendment. In other words, private respondent was attempting to minimize its losses. At the same time, it was able to lease the property for 25 years, renewable for another 25. This can be regarded as another consideration on the price.

Furthermore, **the fact that private respondent sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return. Indeed, private respondent declared the sale in its 1974 return submitted to the BIR. *Within the five-year prescriptive period, the BIR could have issued the questioned assessment, because the declared fair market value of said property was of public record.*** This it did not do, however, during all those five years. Moreover, the BIR failed to prove that respondent's 1974 return had been filed fraudulently. Equally. significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax.

Ineludibly, **the BIR failed to show that private respondent's 1974 return was filed fraudulently with intent to evade the payment of the correct amount of tax. Moreover, even though a donor's tax,** which is defined as "a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration," **is different from capital gains tax,** a tax on the gain from the sale of the taxpayer's property forming part of capital assets, **the tax return filed by private respondent to report its income for the year 1974 was <u>sufficient compliance</u> with the legal requirement to file a return. In other words, the fact that the sale transaction may have partly resulted in a donation does not change the fact that private respondent already reported its income for 1974 by filing an income tax return.**

Since the BIR failed to demonstrate clearly that private respondent had <u>filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all</u>, the period for assessments has obviously prescribed. Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind." *(Boldfacing & underscoring supplied)*

It is clear that the Supreme Court squarely addressed the issue presented in that case. It sustained the findings of the appellate court that the assessed deficiency donor's tax was made beyond the statute of limitations, and considered the filing of the income tax return in 1974 as substantial compliance with the requirement to file a return related to sale transaction which partly resulted in a donation. The Supreme Court likewise declared that the BIR failed to demonstrate that BF Goodrich filed a fraudulent return with intent to evade tax, or that it had failed to file a return.

Contrary to respondent's contention, the similarity of the *BF Goodrich* case and the case at bar cannot be denied. Both cases involve assessments of deficiency donor's tax in relation to sale transaction of properties for a consideration less than their fair market value, and the issue presented in both cases relates to prescription. There is non-filing of donor's tax return in both cases but other returns, *i.e., income tax return in BF Goodrich, and CGT Return in the present case,* were filed before the BIR.

Since the ruling in the *BF Goodrich* case is not merely an *obiter dictum* but a binding precedent, this Court is duty-bound to apply the same in this case. It is settled that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

WHEREFORE, premises considered, the Motion for Reconsideration of the respondent is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice