REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 797
(CTA Case No. 8176)

Present:

Acosta, *P.J.,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

AUG 29 2012 Apolinario 3:08 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the resolution of the CTA First Division, dated June 9, 2011, which denied petitioner's Motions for Reconsideration of the following:

a) March 28, 2011 Resolution denying petitioner's Petition for Review; and

b) April 26, 2011 Resolution accepting petitioner's Motion for Reconsideration, but subject to the *caveat* that its payment of docket fees after the lapse of the reglementary period does not cure the jurisdictional defect.

The Facts[1]

Petitioner is duly organized and existing by virtue of R.A. 7227, as amended, with principal office located at BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City. It may be served with notices and legal processes through the Office of the Government Corporate Counsel (OGCC), located at 3rd Floor, MWSS Building, Katipunan Road, Balara, Quezon City.

Respondent Commissioner of Internal Revenue (CIR) is vested with the authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia*, the power to decide, approve, and grant claims for refunds and/or issue tax credit certificates of erroneously paid or illegally collected internal revenue taxes.

On October 8, 2010, petitioner filed a Petition for Review with the CTA in order to preserve its right to pursue its claim for refund of the Creditable Withholding Tax (CWT) in the amount of P122,079,442.53, which was paid under protest from March 19, 2008 to October 8, 2008. The CWT which petitioner paid under protest was in connection with its sale of the BCDA-allocated units as its share in the Serendra Project pursuant to the Joint Development Agreement with Ayala Land, Inc.

The Petition for Review was filed with a Request for Exemption from the Payment of Filing Fees in the amount of P1,209,457.90.

On October 20, 2010, the CTA First Division denied petitioner's Request for Exemption and ordered it to pay the filing fees within five days from notice.

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[1] *Rollo*, C.T.A. EB Case No. 797, pp. 2-6.

Petitioner moved for reconsideration which was denied by the CTA First Division on February 8, 2011. BCDA was once again ordered to pay the filing fees within five days from notice, otherwise, the Petition for Review will be dismissed.

Petitioner filed a petition for review with the CTA *En Banc* on February 25, 2011, which petition was returned and not deemed filed without the payment of the correct legal fees. Petitioner once again emphasized its position that it is exempt from the payment of such fees.

On March 28, 2011, the petition before the CTA First Division was dismissed. Petitioner attempted to file its Motion for Reconsideration, however, the Officer-In-Charge of the First Division refused to receive the checks for the payment of the filing fees, and the Motion for Reconsideration. BCDA then filed its Motion for Reconsideration by registered mail.

Subsequently, petitioner filed a manifestation stating the incidents relating to the filing of its Motion for Reconsideration. The CTA First Division, April 26, 2011, issued its Resolution, the dispositive portion of which states:

> "WHEREFORE, finding no reason to deny receipt of the supposed Motion for Reconsideration of the Petitioner on the dismissal of its Petition for Review, the Executive Clerk of Court III of this Division, Atty. Margarette Y. Guzman, is hereby DIRECTED to allow petitioner BCDA to file the same, or to accept, said pleading which was allegedly mailed through registered mail, upon receipt thereof, and to commence the procedure in paying the prescribed docket fees, subject to the caveat herein stated, should petitioner BCDA decide to pursue its case."

On May 17, 2011, petitioner moved for reconsideration of the April 26, 2011 resolution and prayed that it be allowed to pay the prescribed docket fees of P1,209,457.90 without qualification. On June 9, 2011, the CTA First Division denied both motions for reconsideration.

The Issues[2]

Petitioner relies on the following grounds:

I. The CTA, First Division erred in dismissing BCDA's Petition for Review for non-payment of the prescribed docket fees within the prescribed period.

II. The CTA, First Division erred in ruling that BCDA is a government owned and controlled corporation and as such, is not exempt from payment of legal fees under Section 22, Rule 141 of the Rules of Court, as amended.

Ruling of the Court

Section 22, Rule 141 of the Rules of Court, as amended, provides for the exemption from the payment of filing fees, as follows:

> "Sec. 22. *Government Exempt*. - The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in the Rule. Local governments and government-owned or –controlled corporations with or without independent charters are not exempt from paying such fees.
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> xxx"

Petitioner's argument hinges on its classification as a government instrumentality instead of as a government-owned or -controlled corporation (GOCC). If it is an instrumentality then it is exempt from the payment of fees required under the Rules of Court. If it is a GOCC, then it is still liable for such filing fees.

Petitioner relies primarily on the rulings of the Supreme Court in *Manila International Airport Authority (MIAA) vs. Court of Appeals*[3] where the Supreme Court declared that the MIAA was a government instrumentality vested with corporate powers. In making this declaration, the Supreme Court included petitioner in the enumeration of national government instrumentalities vested by law with

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[2] *Rollo*, p. 7.
[3] G.R. No. 155650, July 20, 2006.

juridical personalities without any specific discussion with respect to BCDA. Thus, we agree with the CTA Division that such determination, in relation to petitioner herein, was a mere *obiter dictum*.

Petitioner's reliance on Executive Order (E.O.) No. 596[4] is misplaced. E.O. 596 merely defines and includes "government instrumentality vested with corporate powers" or "government corporate entities" under the jurisdiction of the Office of the Government Corporate Counsel (OGCC) as principal law office of government-owned or controlled corporations (GOCCs). This has little impact on petitioner since Section 18 of R.A. No. 7227 specifically provides that the Government Corporate Counsel shall be the *ex officio* legal counsel of BCDA. Clearly, BCDA was very early on classified as a GOCC.

Even E.O. 596 highlights that the distinction created by the Supreme Court is for the purposes of the provisions of the Local Government Code on real estate taxes, and other fees and charges imposed by local government units.

It is clear that petitioner and petitioner's counsel understood this distinction, since despite the promulgation of the MIAA case on July 20, 2006, and E.O. 596 on December 29, 2006, petitioner continued to pay filing fees when it filed cases before the Supreme Court, as certified by the Deputy Clerk of Court and Chief Judicial Records Office of the Supreme Court.[5]

Indeed, petitioner continued to file and pay filing fees[6] before the Supreme Court even after the promulgation of *Philippine Fisheries Development Authority vs.*

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[4] *Defining and Including "Government Instrumentality Vested with Corporate Powers" or "Government Corporate Entities" under the Jurisdiction of the Office of the Government Corporate Counsel (OGCC) as Principal Law Office of Government-Owned or Controlled Corporations (GOCCs) and for Other Purposes*, December 29, 2006.
[5] *Rollo*, pp. 108-109.
[6] *Ibid.*

Court of Appeals[7] on July 31, 2007; and *Manila International Airport Authority vs. City of Pasay, et al.*[8] on April 2, 2009, which again included BCDA as a government instrumentality with corporate powers.

Petitioner now alleges that its position as a government instrumentality was further supported with the enactment of Republic Act (R.A.) No. 10149, entitled *An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or – Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes*, which provides:

> "Section 3. Definition of Terms. -
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> xxx
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> (n) *Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO)."

While the above definition includes petitioner BCDA as a government instrumentality with corporate powers, Section 3(o) specifically provides that for the purposes of said Act, government instrumentalities with corporate powers and government corporate entities shall be included in the term GOCC.

[7] G.R. No. 169386.
[8] G.R. No. 163072.

Indeed, E.O. 596 and R.A. 10149, taken together show the intent of the legislature to treat petitioner, continuously and as it has been previously treated, as a GOCC. Thus, under E.O. 596, petitioner continued to be represented by the OGCC, as befitting its status as a GOCC; and under R.A. 10149, petitioner was treated as a GOCC with respect to financial viability and fiscal discipline.

In fact, even petitioner has continuously acted as a GOCC with respect to its filing fees, as evidenced by the certification from the Supreme Court. It is notable that when the first MIAA case was promulgated, and E.O. 596 was issued, both in 2006, petitioner still continued to pay filing fees on its cases filed before the Supreme Court. Indeed, even after the MIAA case was reiterated in the PFDA case in 2007 and in the second MIAA case in 2009, petitioner still paid filing fees before the Supreme Court. Again, when R.A. 10149 was enacted in 2010, petitioner continued to pay its filing fees before the Supreme Court. What is notable is that it is only before this Court that petitioner requested for exemption from the payment of filing fees. As shown in the Supreme Court's certification, even after petitioner filed its petition for review with the CTA on October 8, 2010, it then subsequently filed petitions <u>and paid</u> its filing fees before the Supreme Court on November 15, 2010 for G.R. No. 194247, and again on December 21, 2010 for G.R. No. 194675.[9]

In light of the foregoing, we quote the June 9, 2011 Resolution of the CTA First Division, *to wit*:

> "BCDA fails to raise any new and substantial arguments, and no cogent reason exists to warrant a consideration of the Court's Resolution dated March 28, 2011 dismissing its Petition for Review.

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[9] *Rollo*, pp. 108-109.

It must be emphasized that payment in full of docket fees within the prescribed period is **mandatory**. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. To repeat, in both original and appellate cases, the court acquires jurisdiction over the case **only upon** the payment of the prescribed docket fees.

In this case, due to BCDA's non-payment of the prescribed legal fees within the prescribed period, this Court has not acquired jurisdiction over the case. Consequently, it is as if no appeal was ever filed with this Court.

Even granting that BCDA was able to pay the prescribed legal fees on April 7, 2011 without incident, that circumstance does not cure the jurisdictional defect, since almost two (2) months had elapsed from the time BCDA received a copy of the Resolution dated February 8, 2011 (*i.e.*, on February 11, 2011), embodying this Court's directive for BCDA to pay the prescribed legal fees within five (5) days from such receipt. The exchange of correspondence, in the interim, between BCDA and the Court's Executive Clerk of Court IV, Atty. Elvessa P. Apolinario, is of no moment, since it is the Court which ordered such payment, and not the said Court official.

Moreover, it must be pointed out that the delay in the payment of legal fees herein, coupled with the fact that BCDA had previously and promptly paid legal fees to the Supreme Court when it filed certain cases before it, negates the existence of good faith, nor could it be considered as an "honest belief and position" on the part of BCDA that it is exempt therefrom.

Finally, the claim of BCDA that there is no indication that BCDA's non-payment of the prescribed docket fees was done deliberately in defiance of the Rules of Court is belied by its continuous refusal to pay the said fees, despite being allowed to do so with a caveat in the Court's Resolution dated April 26, 2011, under the pretext that BCDA would want to do so "without qualification".

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED.**

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice