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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MELINDA GUMAFELIX, as represented herein by EUSEBIO P. DULATAS, JR.,
Petitioner,

- versus -

C.T.A. CASE NO. 5442

HON. LIWAYWAY VINZONS-CHATO as COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
DEC 01 1997

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DECISION

This is a judicial claim for the refund of capital gains tax and documentary stamp tax paid by petitioner amounting to ₱56,255.84 and ₱16,890.00, respectively, in a foreclosure sale involving a piece of real property which was subsequently redeemed within the statutory period of one year.

Petitioner is a resident of Barangay San Vicente of the Municipality of Sta. Maria, Province of Bulacan and is represented herein as Attorney-in-Fact by Eusebio P. Dulatas, Jr., who has a post office address at 864 Liwanag Building, McArthur Highway, Municipality of Meycauayan of the same province.

The facts are as hereunder stated.

On February 7, 1994, petitioner entered into a contract of loan with the spouses Hipolito and Fe Nepomuceno. The loan was secured, in favor of the latter spouses, by a mortgage over a parcel of land covered by Transfer of Certificate (TCT) No. T-72.513 (M) located at Barangay San Vicente of the Municipality of Sta. Maria, Province of Bulacan. The mortgage was later annotated at the dorsal portion of said TCT by the Register of Deeds under Entry No. 149235.

On November 7, 1994, the spouses-mortgagees initiated an extra-judicial foreclosure of the mortgaged property upon failure of petitioner-mortgagor to pay the loan on its due date. On the same day, an auction sale was conducted by the assigned sheriff, Ms. Carmelita S. Ipapo, and for being the lone bidders, the spouses-mortgagees were awarded the property on the tendered price of ₱1,125,116.84. Correspondingly, a certificate of sale was duly executed by said sheriff regarding such award.

The aforestated amount of capital gains tax and documentary stamp tax were subsequently assessed and paid per Authority to Accept Payment No. 1764150, likewise on November 7, 1994, to the Bureau of Internal Revenue ("BIR" for brevity) through its Revenue District Office ("RDO" for short) No. 5 situated at the Municipality of Malolos, Province of Bulacan. As a result, the BIR issued a certificate (no. 761371 B) authorizing registration of the property sold with the Registry of Deeds.

On the following day, November 8, 1994, the certificate of sale issued by the sheriff was duly registered and annotated at the dorsal portion of the mentioned TCT under Entry No. 153502. The registration was also reflected at the back portion of the said certificate.

However, on September 4, 1995 or before the expiration of the redemption period of one year from the date of registration of the certificate of sale, as granted under Act No. 3135, as amended, petitioner-mortgagor was able to redeem said property through the payment of the redemption price to the spouses-mortgagees who, accordingly, executed a deed of redemption in favor of petitioner-mortgagor. The following day, on September 5, 1995, said deed of redemption was registered/annotated at the dorsal portion of TCT No. T-72.513 with the Registry of Deeds of the Province of Bulacan, Meycauayan branch, with the annotation duly reflected at the back portion of the same deed.

The present controversy all started when, on October 24, 1995, herein Mr. Eusebio P. Dulatas, Jr. as attorney-in-fact of petitioner, filed with respondent's RDO No. 25, a written claim for refund of the capital gains tax and documentary tax paid by his client, Melinda Gumafelix, on the foreclosure sale. Mr. Dulatas, Jr. contended in the written claim that the subject lot in which the capital gains and documentary taxes were paid was redeemed by petitioner-mortgagor and that Revenue Memorandum Order ("RMO" for brevity) No. 6-92, dated January 2, 1992 does not apply because it covers financial institutions/companies only and not petitioner-mortgagor nor the spouses-mortgagees, who are private individuals. Such claim was supported by a memorandum, dated October 26, 1995, issued by Revenue Officer Mario Guiang addressed to Revenue District Officer Alberto A. Bernales of RDO No. 25, favorably recommending its refund on the ground that with the full payment and release of the mortgage, the taxes paid did not serve their purpose. Subsequently on the following day, on October 27, 1995, the claim for refund was duly indorsed and forwarded to the Appellate Division of respondent's Bureau in Quezon City, Metro Manila for further appropriate action.

Respondent's Appellate Division, however, has not been able to act upon said written claim for refund, despite the near expiry of the two-year prescriptive period for the filing of a judicial claim for refund from the date of payment, as provided under Section 230 of the Tax Code. In view thereof, petitioner moved to protect her claim by filing the instant appeal on November 6, 1996, through a petition for review, in order to stop the running of the \peremptory period.

At bar, petitioner repleads her stance *a quo*. On the other hand, respondent asseverates, *inter alia*, in her Answer the following special and affirmative defenses, to wit:

> 7. Under Section 21(e) of the Tax Code, as amended, capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals including estates and trust, shall be taxed at the rate of 5% based on the gross selling price or the fair market value prevailing at the time of sale, whichever is higher. The Phrase "including pacto de retro sales and other forms of conditional sales" necessarily includes a mortgage foreclosure sale under Act 3135 as amended by Act 4118. Specifically, under Revenue Memorandum Circular No. 41-86, copy thereof hereto attached as Annex "A", a conditional sale transaction like a mortgage foreclosure sale is embraced under this law.
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> Based on the foregoing provision of the Tax Code, it is clear that a mortgage foreclosure sale is subject to the 5% capital gains which is not refundable or creditable for the simple reason that at the time of payment, said tax was legally due and demandable. Moreover, the subsequent redemption of the property by the mortgagor within the period of redemption does not render the collection of the tax erroneous or illegal so as to entitle the payee to a refund or credit for a tax which was legally due and collectible upon its foreclosure.

> 8. In the case of documentary stamp tax which was paid at the time of the execution of the Certificate of Sheriff Sale following the extra-judicial foreclosure of property, is not also refundable.
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> Under Sec. 173 in relation to Sec. 196 of the Tax Code, as amended, stamp taxes on deeds of sale and conveyances of real property shall be levied, collected and paid for, and in respect to the transactions so had or accomplished, the corresponding documentary stamp taxes. Accordingly, the documentary stamp tax is legally due and collectible upon foreclosure sale which is also the date such transaction or conveyance was had or accomplished.

Records show that petitioner failed to file her formal offer of evidence and memorandum within the time given by the Court. Respondent, on the other hand, opted to dispense with the presentation of witness and merely verbally submitted this case on the pleadings because according to her, there is no dispute as to the amount being claimed for refund and that the only issue at bar is petitioner's entitlement to refund.

The sole issue involved in the case at bar is thus limited to whether or not, legally speaking, petitioner is entitled to her claim for refund.

After a thorough scrutiny of the facts, respective argumentation of the parties, the pertinent provisions of the Tax Code and BIR implementing regulations, We peremptorily rule in favor of the respondent.

For a better understanding of the issue at bar, the pertinent provisions of the Tax Code relating to capital gains tax on sale of property by individuals and BIR implementing regulations in point are hereunder reproduced, to wit:

> **A. SEC. 21.** ***Tax on citizens or residents.*** - x x x
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> (e) *Capital gains from sales of real property.* - The provisions of Section 33 (b) notwithstanding, capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trust, shall be taxed at the rate of 5% based on the gross selling price or the fair market value prevailing at the time of sale whichever is higher; x-x-x.
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> **B. REVENUE MEMORANDUM ORDER NO. 6-92**
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> x-x-x
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> Considering that in extra-judicial foreclosure sales under Act No. 3135 as amended by Act No. 4118, the creditor-financial institution (bank, finance and insurance companies) is the statutory seller, representing the owner-mortgagor of the real property, the said financial institution becomes liable for the payment of the capital gains tax due on such foreclosure sale based on the bid price in the auction sale. The bank, finance and insurance companies, however, may get a reimbursement or recover the capital gains tax paid, if the right of redemption is exercised by the debtor-mortgagor or when the property is sold to any party whatsoever. (BIR Ruling No. 006-92)

Accordingly, Section 2.2 of RMO No. 29-86 as amended by RMO No. 16-88 as further amended by RMO 27-89 is therefore hereby amended to read as follows:

> "2.2 - The tax applies not only to ordinary sale transaction but also to pacto de retro sales and other forms of conditional sales, which necessarily include mortgage foreclosure sales (judicial and extra-judicial foreclosure sales)."

x-x-x

C. SEC. 173. *Stamp taxes upon documents, instruments, loan agreements, and papers.* - Upon documents, instruments, loan agreements, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: x-x-x. (As amended by R.A. 7660)

D. SEC. 196. *Stamp tax on deeds of sale and conveyance of real property.* - On all conveyance, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:

x x x

A reading of the aforequoted provisions of Section 21(e) of the Tax Code would reveal outright that herein mentioned foreclosure sale is a form of conditional sale because it is subject to the condition that the property sold may be redeemed within a period of one year following the registration of the certificate of sale issued by the sheriff with the Registry of Deeds in accordance with Act No. 3135, as amended. As such, the foreclosure sale is subject to the five per cent (5%) capital gains tax prescribed thereunder.

The assertion of the petitioner that RMO No. 6-92, *supra*, is not applicable to her situation on account of the fact that she is an individual and not a bank, insurance or finance company, which are the subject matter of said RMO, is quite misplaced. Although petitioner is not included within the coverage of RMO 6-92, it is, however, *non sequitor* for her to conclude that because of such non-coverage, she is entitled to a refund. As above discussed, Section 21(e) of the Tax Code is very clear that the foreclosure sale affecting the individual-petitioner is a conditional sale subject to capital gains tax. We observe also that even RMO 6-92, *supra*, supports our position that the owner-mortgagor of a real property has to pay the capital gains tax when it stated that banks. insurance and finance companies are mere statutory sellers *representing* the owner-mortgagor in cases of judicial and extra-judicial foreclosure sales.

Likewise, under Section 173 in relation with Section 196 of the Tax Code, *supra*, a documentary stamp tax is levied specifically upon conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers. Undeniably, the certificate of sale issued to the spouses-mortgagees constitutes a form of conveyance, deed or instrument whereby the real property so foreclosed and sold in an auction to the spouses-mortgagees effectively granted, assigned, transferred or otherwise conveyed to the latter such real property sold.

In addition, it must be noted that the law does not distinguish as to what kind of sales; whether absolute or conditional, are included in the word "sales" as used in the aforementioned Sections 173 and 196. Hence, a foreclosure sale is deemed included within its definition. In fine, the documentary stamp tax levied and collected by respondent on the certificate of sale is hereby declared to be in accordance with law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals