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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES), INC.,
and MARIO DEL ROSARIO,
Petitioners,

- versus - C.T.A. CASE NO. 4426

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
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11/9/92

D E C I S I O N

Petition for Review was filed by petitioners claiming for refund of illegally or erroneously paid taxes by petitioner Caltex in the amount of P461,941.00 and accompanied by the following pertinent allegations of facts which we quote in consideration of the nature of the decision arrived at by the Court in this case.

> "On June 11 and October 21, 1985, del Rosario, mortgaged three parcels of land situated in Mariveles, Bataan, in favor of Caltex to secure payment of P6,000,000 worth of petroleum products and other mechandise which he, as Caltex dealer, purchased on credit from Caltex.
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> Upon the failure of del Rosario to pay his P6,000,000 indebtedness, Caltex extrajudicially foreclosed the real estate

mortgage. At the public auction sale conducted by the Sheriff of Bataan on July 27, 1987, the three parcels of land were sold to Caltex for the total amount of P500,000.

In order to effect the registration of the sale in its favor with the Register of Deeds on February 29, 1988, Caltex paid capital gains taxes amounting to P440,969.00 and documentary stamp taxes amounting to P60,000 based on the mortgage obligation of P6,000,000. (Copies of Confirmation Receipts Nos. 13532015 and 1352014 issued for such payments are hereto attached as Annexes "A" and "B", respectively.)

In BIR Ruling No. 2122-88 dated May 20, 1988, respondent ruled that the capital gains tax on the extrajudicial foreclosure sale of the lots mortgaged by del Rosario to Caltex should be based on the bid price of P500,000 or the zonal values of said properties, whichever was higher, and the documentary stamp tax should be based on the bid price of P500,000." (Copy of said ruling is hereto attached as Annex "C" and made an integral part hereof.)

Answer was filed by respondent and it states, among others, that:

"1. He ADMITS the material allegations in paragraphs I, II, III, V, and VI of the petition;

2. He SPECIFICALLY DENIES the allegations on paragraph IV of the petition for being false, the truth being that it was petitioner Mario del Rosario, not petitioner Caltex (Philippines), Inc., who paid the capital gains tax and documentary stamp tax;

3. He ADMITS the allegation in paragraph VIII of the petition that the capital gains tax and documentary stamp tax payments were in excess of the correct amounts payable, with the qualification

that the correct amount of excess payment is P460,065.45. He, however, SPECIFICALLY DENIES the allegation in said paragraph that the excess payment should be refunded for being erroneous, the truth being those stated in the hereunder Special and Affirmative Defenses;

4. He ADMITS the allegation in paragraph VIII of the petition that a claim for refund was made for the excess payment of capital gains tax and documentary stamp tax, with the qualification that it was petitioner Mario del Rosario, that made the claim for refund. He, however, SPECIFICALLY DENIES the allegation in said paragraph that respondent has not acted upon said claim for being false, the truth being that said claim had been processed and investigated. In fact, respondent denied the claim in a letter dated March 2, 1991;

5. He SPECIFICALLY DENIES the allegation in paragraph IX of the petition for being an erroneous conclusion, the truth being those stated in the following-"

As special and affirmative defenses, respondent alleges, esssentially, that:

"6. Petitioner Caltex (Philippineøs), Inc. is not the real party in interest to claim the refund of the excess payment of capital gains tax and documentary stamp tax since it was petitioner Mario del Rosario who paid the same;

7. This Honorable Court has no jurisdiction to take cognizance of the case inasmuch as petitioner Mario del Rosario, who paid the taxes sought to be refunded, did not file with respondent a claim for the refund thereof as required under Section 243 (now Section 230) of the 1988 National Internal Revenue Code;"

Seemingly finding some room for the application of Rule 34 of the Rules of Court, petitioners filed

Motion for Summary Judgment. The Motion for Summary Judgment was filed by petitioners on the main ground that except for two items all the essential facts alleged on the petition are admitted. Paragraphs II, III, IV, V, VI, VII, VIII, were alleged to have been admitted by respondent and that the only raised issues as to petitioners' allegation that it was Caltex who paid the taxes by contending that it was petitioner Mario del Rosario who paid them, and the other allegation that no action has been taken on the refund claim by contending that such claim has been denied by letter of respondent of March 2, 1990. For the petitioners, even with the denial on the alleged non-action on the refund claim, the averment of respondent, is still an implied admission that the former has not acted on the claim before the filing of the Petition for Review on February 23, 1990. This according to petitioners leaves only one factual issue, and that is, as to who paid the taxes. Thus, petitioners, in answer to this question, point to the affidavit of Mr. Pedro M. Carbonell II attach to the subject motion stating that: a) He handled for Caltex the extra-judicial foreclosure of del Rosario's lots; b) He bid in behalf of Caltex in the auction sale of said lots; c) After the Certificate of Sale in favor of Caltex was issued by the Deputy Sheriff of Bataan, he requested the BIR Regional District Office (RDO) in Balanga, Bataan to compute the taxes to be paid as required by the Register of Deeds of Bataan for the registration of the sale and a handwritten computation was given to him and it indicated Caltex because the Bataan RDO was aware that Caltex was paying the taxes; d) He caused the preparation by the Bataan RDO of the capital gains tax return and signed it above the typewritten name "Mario del Rosario" and the handwritten words "For Caltex", and filed it on November 17, 1987; e) He tendered to the Bataan RDO Caltex Citibank Check No. 020469 dated February 16, 1988 for P500,696.00 in payment of the capital gains and documentary stamp taxes and copy of the cancelled check was attached as Annex "D" of Mr. Carbonell's affidavit.

Petitioners argue against the first affirmative defense of respondent that Caltex is not the real party in interest to claim the refund by citing cases that establish Caltex's right to the tax, which as asserted has been erroneously paid by it. On the second affirmative defense of respondent that this Court has no jurisdiction over the case since petitioner Mario del Rosario who allegedly paid for the tax did not file a claim for refund, petitioners countered with its own elaboration of what they think is the underlying purpose of Section 230 of the National Internal Revenue Code in requiring a claim for refund as a prerequisite to a suit or proceeding for the recovery of any internal revenue tax.

Respondent file his opposition to the motion for summary judgment contending that summary judgment is unavailing under the circumstances of this case in view of the genuine issues of material facts which allegedly are;

a) Whether it was petitioner Caltex or petitioner Mario del Rosario who paid the subject tax;

b) Whether petitioner Mario del Rosario filed a claim for refund;

c) Whether the amount alleged to be eroneously paid is P461,940.00 or P460,065.45.

Further, that on a motion for summary judgment, the Court is not authorized to decide an issue of fact, but is to determine whether the pleadings and record before the Court create an issue of fact which necessitates a trial. And, this Court from a motion for summary judgment is not authorized to decide whether it was petitioner Caltex or petitioner Mario del Rosario who paid the tax, whether petitioner

Mario del Rosario filed a claim for refund, and the correct amount of tax alleged to be erroneously paid.

In their "Reply to Opposition (To Motion for Summary Judgment)", petitioners noted that respondent relies only on his Answer to support his aforestated stand and that he failed to present supporting and opposing affidavits as required by Sections 3 and 5, Rule 34 of the Rules of Court. Petitioners contest the genuineness and materiality of the averred issues of fact postulated by respondent by submitting that they are not bona fide or substantial issues. Petitioners point to the affidavit of Mr. Pedro M. Carbonell II and its annexes for proof as to who paid the taxes in contrast to no proof shown by respondent. For the petitioners, the difference in the amount of this suit is not a substantial issue. Citing cases, petitioners contend that the determination of such amount is merely a mathematical problem and not a substantial issue of a material fact.

We are impressed by the lawfulness of petitioners' claim. The evidence and the legal authorities appear to us as supportive of this conclusion.

We find that the affidavit of Mr. Pedro M. Carbonell II attached to the Motion for Summary

Judgment credibly shows that it was Caltex who paid the total amount of P500,696.00 representing capital gains tax and documentary stamp tax based on the amount of the loan given by Caltex in favor of Mario del Rosario equal to P6,000,000.00. Subsequently, Caltex realized the error in the amount it paid, when, in answer to Caltex's own query, respondent ruled (Annex "C", p. 7 CTA Records) that the capital gains tax and documentary stamp tax is computed on the basis of the gross selling price or the fair market value prevailing at the time of sale, whichever is higher. The correct measure of the capital gains tax and the documentary stamp tax was therefore the bid price of P500,000.00 and not P6,000,000.00 (*Ibid.*). Respondent contests Caltex's right to claim refund of the excess amount paid on the position that it was Mario del Rosario who paid the taxes but since Mario del Rosario has not filed a claim for refund, this Court does not have jurisdiction on this case. Respondent thinks such an answer sufficiently creates a genuine issue as to a material fact. But as Section 5, Rule 34 would require it, the adverse party or the respondent should submit opposing affidavits and supporting documents contradicting movant's plea for summary judgment to create the condition that there is such a genuine issue on a material fact. As it is, respondent did not present any document countering Caltex's submitted affidavit and other supporting documents that would have made a genuine issue on the matter of who erroneously paid the taxes.

If it was Caltex then who erroneously paid the taxes, respondent cannot convince this Court to look to Mario del Rosario for the requisite claim for refund under Section 230 of the National Internal Revenue Code (NIRC) as he did not pay the tax. We are in accord with petitioners in its elaboration of Section 230 of the NIRC to include that construction that Section 230 does not specify the person who should file the claim for refund. The decisions on the matter are of the implication that it need not be the taxpayer who should file a claim for refund as it could be the person who actually paid the tax provided that the payment was involuntary or in the words of our National Internal Revenue Code where there is a situation where a tax was "erroneously or illegally assessed or collected". The pertinent part of Section 230 provides:

> "Sec. 230. No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected ... until a claim for refund or credit has been duly filed with the Commissioner xxx."

Indeed, it was Caltex who filed the claim for refund because it paid for the tax. At this point, We would mention that we find the decisional authorities cited by petitioners as not only appropriate but noteworthy. Whether Caltex's suit in this Court should be entertained or not on the basis of Section 1, Rule 5 of the this Court's rules that the case shall be brought or submitted by "the taxpayer or the aggrieved party", we deem that the suit can be entertained as Caltex may be considered a "taxpayer" as that term is used in said Section. Consider this pronouncement in a case on who is deemed a "taxpayer" in refund suits:

> "The word "taxpayer" should not be deemed to include only a person against whom a tax has been assessed; on the contrary, it should be construed so as to include any person who in fact paid the tax, if such payment was not voluntarily made. In **United States v. Updieke**, 1930, 281 U.S. 489, at page 494, 50 S. Ct. 367, at page 369. 74 L. Ed. 984, the Supreme Court said:
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> > "Indeed, when used to connote payment of a tax, it puts no undue strain upon the word 'taxpayer' to bring within its meaning that person whose property, being impressed with a trust to that end, is subjected to the burden. Certainly it would be hard to convince such a person that he had not paid a tax." (**McMahon v. U.S.** 172 F. Supp. 490; underscoring supplied.)

We have put emphasis as well on the condition that to recover the tax a person who paid the tax should have paid the tax involuntarily because the tax may not be recovered in the instance, for example, where taxes are voluntarily made by one person for another with donation as the underlying motive for the case (**Parsons v. Anglim** 143 F. 2d. 534). Here Caltex is clear on the involuntariness of its act. We recognize that it was constrained by circumstances to pay the taxes to protect its interest on the property. That is, in a foreclosure sale the only evidence of sale in favor of the buyer is the certificate of sheriff's sale which is not binding on third persons nor does it vest ownership on the buyer. The act of registration as correctly noted by Caltex is the operative act that conveys and affects the land. Conscious of Section 49(a) that the sale cannot be registered without payment of the corresponding taxes, Caltex had to and did pay for the capital gains tax and the documentary stamp tax. As it is, the payment was made by Mr. Pedro M. Carbonell II with a notice "For Caltex" appearing under Carbonell's signature (Annex "B", p. 40, CTA Records).

From another viewpoint, it need not be the "taxpayer" who initiates the suit under Sec. 1, Rule

5 of this Court's rules, as said section speaks only of an "aggrieved party". Further, in relation to Section 11 of the R.A. 1125 it does not appear that said section restricts the person who may bring or submit a case to this Court to the taxpayer only as Section 11 of R.A. 1125 refers to "any person . . . adversely affected by a decision or ruling "of the Commissioner of Internal Revenue may file an appeal with this Court. When reference is made on the "aggrieved party" or "any person adversely affected" our attention may logically be focused on the term "real party in interest" because the Rules of Court which are suppletory to this Court's rules, as long as they are not in conflict, provided that "Every action must be prosecuted and defended in the name of the real party in interest". And the real party in interest is the party who could be benefited or injured by the judgment or who is entitled to the fruits of the suit (Salonga v. Warner Barnes & Co., 88 Phil. 125). It is clear that Caltex is the "aggrieved party", the "person adversely affected" or a "real party in interest" within the meaning of these terms.

There is another principle which militates against the side of respondent in this case. We see that as a matter of equity or the principle of solutio indebiti, the sovereign or the taxing authority cannot in good conscience hold on to what is rightfully not his. Once again we pick from the citations of authoritative cases made by petitioners in this case which states:

> "In recognition of the fact that erroneous determinations and assessments will inevitably occur, the statutes, in a spirit of fairnes, invariably afford the taxpayer an opportunity at some stage to have mistakes rectified. Often an administrative hearing is afforded before the assessment becomes final; or administrative machinery is provided whereby an erroneous collection may be refunded; in some instances both administrative relief and redress by an action against the sovereign in one of its courts are permitted methods of restitution of excessive or illegal exaction. Thus the usual procedure the recovery of debts is reversed in the field of taxation. Payment precedes defense, and the burden of proof, normally on the claimant, is shifted to the taxpayer. The assessment supersedes the pleading, proof and judgment necessary in an action at law, and has the force of such a judgment. The ordinary defendant stands in judgment only after a hearing. The taxpayer often is afforded his hearing after judgment and after payment, and his only redress for unjust administrative action is the right to claim restitution. But these reversals of the normal process of collecting a claim cannot obscure the fact that after all what is being accomplished is the recovery of the just debt owed the sovereign. If that which the sovereign retains was unjustly taken in violation of its own statute, the withholding is wrongful. Restitution is owed the taxpayer." (Bull v. U.S., 295 U.S. 247, 79 L. ed. 1421, 1927.)

As to the proper amount, it should then be the amount alleged by petitioners, again in view of the supporting document (Annex "D", p. 9, CTA Records) submitted by them as against none by respondent. A small difference in the amount claim has already been held as not sufficient to tender a genuine issue particularly in the absence of counter affidavits opposing the claimed amount (Phil. National Bank v. Phl. Leather Co., 105 Phil 404).

WHEREFORE, judgment is rendered ordering the respondent Commissioner of Internal Revenue to refund to petitioner Caltex (Philippines), Inc. the total amount of P461,941.00 erroneously paid capital gains tax and documentary stamp tax.

SO ORDERED.

Quezon City, Metro Manila, November 9, 1992.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

(On Leave)
MANUEL K. GRUBA
Associate Judge

Ramon De Veyra
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals