REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GREAT LANDHO, INC. TT&T DEVELOPMENT, INC., and TAMA PROPERTIES INC., Petitioners,	**CTA CASE NO. 10184**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson,* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 0 4 2023 4:30 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioners Great Landho, Inc., TT&T Development, Inc. and Tama Properties, Inc. (**petitioners/ GLI, TDI and TPI**), praying for the refund or tax credit in the total amount of **₱15,879,456.00**[2], allegedly representing erroneously paid capital gains tax (**CGT**) and documentary stamp tax (**DST**) in connection with the sale or transfer of parcels of land entered between petitioner GLI, as buyer, and petitioners TDI and TPI, as sellers.

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1 Filed on 10 October 2019, Division Docket, Volume I, pp. 6-151, with annexes.
2 Initially ₱17,595,168.00 less ₱1,715,712.00 subsequently granted by respondent.

PARTIES OF THE CASE

Petitioner GLI is a domestic corporation duly organized and existing under the laws of the Philippines and primarily engaged to acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether to improve, manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances.[3]

Petitioners TDI and TPI are also domestic corporations duly organized and existing under the laws of the Philippines and both are primarily engaged to own, use, improve, develop, exchange, lease, and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), vested with authority, among others, to decide, approve and grant applications for refund or tax credit of internal revenue taxes such as erroneous payments of CGT and DST. He or she may be served with summons and other court processes at the Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

On 04 October 2017, petitioner GLI entered into separate notarized Deeds of Absolute Sale[5] with petitioners TDI and TPI involving parcels of land situated at Barangay Hugo Perez, Trece Martires City, Cavite, with the following details:

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3 Paragraph 1(a), I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), id., pp. 345-346.
4 Paragraphs 1(b) and (c), id., p. 346.
5 Paragraphs 1(d) and (e), id.

Registered Owner	Transfer Certificate of Title (TCT) Nos.	Gross Selling Price	Exhibit No.
Petitioner TDI	T-67136, T-67137, T-67138, T-67139, T-81847, O77-2015000683 and O77-2015000684	₱74,106,600.00	"P-10"[6]
Petitioner TPI	T-73508, T-73509, 077-2015000681 and 077-2015000682	9,937,200.00	"P-11"[7]
Total		**₱84,043,800.00**	

In order to secure the Certificate Authorizing Registration (**CAR**) and the Tax Clearance Certificate (**TCC**) from the BIR, petitioner GLI proceeded to pay the CGT and DST due on the foregoing sale transactions, as follows:

Summary of Payments/Remittances	Seller		Total
	Petitioner TDI	Petitioner TPI	
Gross Selling Price of Real Properties Sold	₱74,106,600.00	₱9,937,200.00	₱84,043,800.00
Fair Market Value (FMV) of Real Properties Sold	₱206,007,040.00	₱28,595,200.00	₱234,602,240.00
CGT (6% of the FMV) [a]	**₱12,360,422.40**[8]	**₱1,715,712.00**[9]	**₱14,076,134.40**
Payment Date	10 October 2017[10]	27 October 2017[11]	
DST (₱15.00 *per* ₱1,000.00 of FMV) [b]	**₱3,090,105.60**[12]	**₱428,928.00**[13]	**₱3,519,033.60**
Payment Date	27 October 2017[14]	27 October 2017[15]	
Total Paymenys/ Remittances [c] = [a] + [b]	**₱15,450,528.00**	**₱2,144,640.00**	**₱17,595,168.00**[16]

6 Id., Volume II, pp. 572-577.
7 Id., pp. 578-581.
8 Exhibit "P-15" (BIR Form No. 1606), id., pp. 585-586.
9 Exhibit "P-17" (BIR Form No. 1606), id., pp. 588.
10 Exhibit "P-16" (BIR Payment Slip), id., p. 587.
11 Exhibit "P-18" (BIR Payment Slip), id., p. 589.
12 Exhibit "P-19" (BIR Form No. 2000-OT), id., p. 590.
13 Exhibit "P-21" (BIR Form No. 2000-OT), id., pp. 592-593.
14 Exhibit "P-20" (BIR Payment Slip), id., p. 591.
15 Exhibit "P-22" (BIR Payment Slip), id., p. 594.
16 Paragraphs 1(f), supra at note 3, p. 346.

However, on 05 February 2018, before effecting the transfer of the titles over the real properties in favor of petitioner GLI, petitioners mutually agreed to rescind, revoke and cancel the aforesaid sale transactions, as evidenced by the two (2) "Revocation/Cancellation of Deed of Absolute Sale"[17] executed between petitioner GLI (through its President and authorized representative, Marjorie Jane D. Ng [**Ng**] and petitioners TDI and TPI (through their common Corporate Secretary and authorized representative Cherrie L. Siy [**Siy**]).[18]

In consideration of the revocation or cancellation of the aforesaid sale transactions, petitioner GLI filed a Letter-Application for Refund dated 10 August 2018[19] with the BIR's Revenue District Office (**RDO**) No. 54A-East Cavite, with attached Applications for Tax Credits/Refunds (BIR Forms No. 1914) for CGT[20] and DST[21] (**administrative claims**). RDO No. 54A-East Cavite received petitioners' administrative claims on 16 August 2018.

On 29 January 2019, petitioner GLI received a Letter dated 22 January 2019 from RDO No. 54A-East Cavite's Revenue District Officer, Erlinda V. Victorino (**RDO Victorino**), denying its applications for refund of its alleged erroneously paid DST (**First Denial Letter**).[22] As stated in RDO Victorino's First Denial Letter, petitioner GLI's claims for DST refund were denied on the ground that the subsequent cancellation of the sale transactions does not have the effect of cancelling the DST due on the sale transactions.

On 12 March 2019, petitioner GLI filed a Letter for Reconsideration dated 07 March 2019[23] (**Request for Reconsideration**), asking RDO Victorino to reconsider the denial of its applications for refund of erroneously paid DST considering that there was no actual transfer or conveyance of the properties subject of the sale transactions and that the obligation to pay DST does not attach upon the mere execution of the Deeds of Absolute Sale.

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17 Exhibits "P-23" and "P-24", Division Docket, Volume II, pp. 595-601 and 602-607, respectively.
18 Paragraphs 1(g), supra at note 3, p. 346.
19 Exhibit "P-39", Division Docket, Volume II, p. 650.
20 Exhibits "P-42" and "P-43", id., pp. 653 and 654, respectively.
21 Exhibits "P-40" and "P-41", id., pp. 651 and 652, respectively.
22 Exhibit "P-55", id., p. 665.
23 Exhibit "P-56", id., pp. 666-667.

Due to RDO Victorino's alleged inaction on its Letter for Reconsideration above, petitioner GLI claimed that it was constrained to commence a judicial claim to protect its right to seek judicial relief for the refund of erroneously paid DST.

There being no formal communication from the BIR on the status of petitioners TDI's and TPI's administrative claims for refund of alleged erroneously paid CGT, petitioners claimed that they were likewise constrained to seek relief through a judicial claim.

PROCEEDINGS BEFORE THE COURT

On 10 October 2019, petitioners filed a Petition for Review[24] before this Court and which was raffled to the Second Division[25]. The petition was docketed as CTA Case No. 10184.

On 14 October 2019, the Court issued Summons[26] ordering respondent to file an Answer within fifteen (15) days from service. Respondent received the said Summons on 22 October 2019.[27]

After being granted two (2) extensions of time by the Second Division[28], respondent filed its Answer[29] on 03 January 2020. There, respondent cited the following special and affirmative defenses: (1) the subject CGT and DST were not erroneously nor illegally collected as the same were imposed when petitioners sold and purchased parcels of land with each other; and, (2) since there was no rescission but a mere revocation of the sale transactions, the contracts covering the same were valid and petitioners are liable to pay CGT and DST thereon.

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24 Supra at note 1.
25 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, Associate Justice Cielito N. Mindaro-Grulla (Ret.) and Associate Justice Jean Marie A. Bacorro-Villena, as Members.
26 Division Docket, Volume I, p. 152.
27 Id.
28 See Orders dated 08 November 2019 and 11 December 2019, id., pp. 165 and 171, respectively.
29 Id., pp. 172-180.

On 08 January 2020, the Second Division issued a Notice of Pre-Trial Conference[30] and set the case for pre-trial on 13 February 2020. In compliance with the Court's order, petitioners filed their Pre-Trial Brief[31] on 10 February 2020, while respondent filed his or her Pre-Trial Brief[32] on the same date.

On 12 February 2020, respondent forwarded to the Second Division the entire BIR Records of the present case consisting of two (2) folders: (1) the GLI Folder consecutively numbered from page one (1) to one hundred thirteen (113); and, (2) the TDI Folder consecutively numbered from pages one (1) to one hundred thirty-six (136).[33]

During the 13 February 2020 Pre-Trial Conference, the Second Division granted both parties twenty (20) days or until 04 March 2020 within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[34] On 03 March 2020, the parties submitted their JSFI.[35]

On 12 March 2020, the Second Division issued a Pre-Trial Order[36] approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued, petitioners presented their testimonial and documentary evidence. They offered the testimonies of their witnesses, namely: (1) Cleofe P. Adiao (**Adiao**), petitioners' Administrative Officer; and, (2) Ng, petitioners' President.

However, on 29 June 2020, upon motion of petitioners' counsels, the Second Division reset the presentation of petitioners' evidence to 09 September 2020 and allowed the hearing to be conducted through videoconference. The Court took into consideration the fact that petitioners' witnesses are senior citizens with hypertension and respiratory infections, and ordered petitioners' counsels to submit notarized medical certificates.

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30 Id., pp. 182-183.
31 Id., pp. 316-326.
32 Id., pp. 330-333.
33 See Compliance dated 12 February 2020, id., pp. 335-337.
34 See Minutes of the Hearing and Order, both dated 13 February 2020, id., pp. 340 and 341, respectively.
35 Id., pp. 345-354.
36 Id., pp. 367-374.

In compliance with the Court's order, petitioners submitted Adiao's and Ng's separate notarized medical certificates on 21 July 2020.[37] The Second Division noted the same in the Minute Resolution dated 24 July 2020.[38]

During the 09 September 2020 videoconference hearing, Adiao identified her Judicial Affidavit dated 06 February 2020[39] where she declared that:

(1) As petitioners' Administrative Officer, she is responsible for all matters relating to the purchase and sale of real properties owned by petitioners, filing and custody of corporate records and regulatory compliance with various government agencies;

(2) Her responsibilities include the preparation, review and custody of necessary documents relating to the purchase and sale of real properties owned by petitioners, coordination and compliance with the requirements and procedures of the BIR relative to the payment of taxes and filing of tax returns on such transactions and facilitating the preparation of necessary documents for the transfer of titles of the subject real properties;

(3) She was personally involved in processing the transfer of the subject real properties from petitioners TDI and TPI to petitioner GLI, from the execution of the Deeds of Absolute Sale, payments of the purchase price and the corresponding CGT and DST, the execution of the Revocation/Cancellation of the Deeds of Absolute Sale until the filing of the administrative claims for refund with the BIR;

(4) On 04 October 2017, petitioner GLI purchased various parcels of land situated at Barangay Hugo Perez, Trece Martires City, Cavite;

(5) She processed the transfer of the subject real properties, which included, among others, the payment of the corresponding CGT and DST and the filing of the corresponding tax returns with the BIR;

(6) She was supposed to go to the Register of Deeds to secure certified true copies of the titles of the subject real properties but she cancelled that schedule when she learned that petitioners

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37 See Compliance dated 17 July 2020, id., Volume II, pp. 506-510, with annexes.

38 Id., p. 512.

39 Exhibit "P-58", id., Volume I, pp. 186-315, with attached copies of the exhibits witness Cleofe P. Adiao identified.

decided to revoke or cancel the Deeds of Absolute Sale both executed on 04 October 2017;

(7) Petitioners filed administrative claims for refund in the aggregate amount of ₱17,595,168.00, representing erroneously paid CGT and DST pertaining to the revoked or cancelled sale transactions;

(8) Thereafter, the BIR issued three (3) Tax Verification Notices (**TVNs**), all signed by RDO No. 54A-East Cavite's Revenue District Officer, Simplicio V. Cabantac, Jr. (**RDO Cabantac**), informing petitioners that the BIR officer named therein is authorized to verify their administrative claims for refund of erroneously paid CGT and DST;

(9) On 29 January 2019, petitioner GLI received RDO Victorino's First Denial Letter, denying its application for refund of erroneously paid DST amounting to ₱3,519,033.60 on the ground that the subsequent cancellation of the sale transactions did not have the effect of cancelling the DST due thereon;

(10) Petitioner GLI filed a Request for Reconsideration on RDO Victorino's First Denial Letter;

(11) Petitioners TDI and TPI likewise did not receive any formal communication regarding the status of their applications for refund of erroneously paid CGT in the total amount of ₱14,076,134.40;

(12) Thus, on 10 October 2019, petitioners proceeded to file their judicial claim for refund of erroneously paid CGT and DST;

(13) However, on 21 October 2019, petitioner TPI received a letter from BIR Revenue Region (**RR**) No. 9A-CaBaMiro, granting its application for refund of erreously paid CGT amounting to ₱1,715,712.00; and,

(14) One of petitioners' external legal counsels picked up the check representing the erroneously paid CGT of ₱1,715,712.00.

No cross-examination was conducted.[40]

[40] TSN dated 09 September 2020, p. 8.

Next to testify during the 09 September 2020 videoconference was petitioners' President, Ng, who identified her Judicial Affidavit dated 24 June 2020[41] where she declared that:

(1) As petitioners' President, she is responsible for all matters relating to the management and operations of petitioners;

(2) Her responsibilities include supervision in the preparation and review of corporate and financial documents, oversight function to ensure compliance with BIR requirements, coordination and consultation with external auditors regarding tax matters affecting petitioners and assistance in the negotiation of material contracts for and on behalf of petitioners as well as ensuring the proper performance of responsibilities of each of the contracting parties;

(3) Petitioners GLI, TDI and TPI are related companies since they are owned and managed by the same individual stockholders, including herself;

(4) She was authorized, through a Secretary's Certificate executed on 02 October 2017, to sign all necessary documents and do all acts on behalf of petitioner GLI for the purpose of effecting the purchase of various parcels of land situated at at Barangay Hugo Perez, Trece Martires City, Cavite;

(5) She signed the two (2) Deeds of Absolute Sale on behalf of petitioner GLI;

(6) Petitioners' Corporate Secretary, Siy, was authorized, through separate Secretary's Certificates (both executed on 02 October 2017), to sign all necessary documents and do all acts on behalf of petitioners TDI and TPI for the purpose of effecting the sale of various parcels of land situated at at Barangay Hugo Perez, Trece Martires City, Cavite;

(7) She instructed Adiao to proceed with processing the transfer of titles of the subject real properties, including, among others, the payment of the necessary CGT and DST and the filing of the corresponding tax returns;

(8) As agreed upon in the Deeds of Absolute Sale, petitioner GLI shall pay for the CGT, DST, Transfer Fee and Registration Fee pertinent to the transfer of real properties under the name of petitioner GLI.

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41 Exhibit "P-59", Division Docket, Volume I, pp. 378-502, with attached copies of the exhibits witness Marjorie Jane D. Ng identified.

(9) The transfer of the titles to the subject real properties did not push through since petitioners decided to revoke or cancel the Deeds of Absolute Sale due to a change in management plans, as evidenced by the two (2) Revocations/ Cancellations of Deed of Absolute Sale, both dated 05 February 2018, the first executed by herself for petitioner GLI and Corporate Secretary Siy for petitioner TDI and the second executed by herself for petitioner GLI and Corporate Secretary Siy for petitioner TPI;

(10) The transfer of the titles to the subject real properties did not push through as evidenced by the TCTs that have remained in the name of either petitioner TDI or petitioner TPI.

(11) Petitioner GLI filed two (2) administrative claims for refund of erroneously paid DST for the sale transactions involving petitioners TDI's and TPI's real properties amounting to ₱3,090,105.60 and ₱428,928.00, respectively.

(12) Petitioner GLI initially filed two (2) administrative claims for refund of erroneously paid GCT but, as advised by the BIR officers from RDO No. 54A, petitioners TDI and TPI instead filed separate administrative claims for refund of the said erroneously paid CGT amounting to ₱12,360,422.40 and ₱1,715,712.00, respectively.

(13) She was authorized, through a Secretary's Certificate executed on 06 March 2018, to process the claims for refund and sign the Letter-Application for Refund dated 10 August 2018;

(14) She then executed a Special Power of Attorney dated 05 February 2018, authorizing Adiao to process the claims for refund and sign the Applications for Tax Credits/Refunds (BIR Forms No. 1914);

(15) Thereafter, the BIR issued three (3) TVNs, all signed by RDO Cabantac, informing petitioners that the BIR officer named therein is authorized to verify their administrative claims for refund of erroneously paid CGT and DST;

(16) On 22 January 2019, petitioner GLI received RDO Victorino's First Denial Letter, denying its application for refund of erroneously paid DST amounting to ₱3,519,033.60 on the ground that the subsequent cancellation of the sale transactions did not result in the cancellation of the DST due thereon;

(17) Petitioner GLI filed a Request for Reconsideration on RDO's Victorino's First Denial Letter;

(18) Petitioners TDI and TPI likewise did not receive any formal communication regarding the status of their applications for

refund of erroneously paid CGT in the total amount of ₱14,076,134.40;

(19) Thus, on 10 October 2019, petitioners proceeded to file their judicial claim for refund of erroneously paid CGT and DST;

(20) However, on 10 October 2019, petitioner TPI received a letter from BIR RR No. 9A-CaBaMiro, granting its application for refund of erreously paid CGT amounting to ₱1,715,712.00; and,

(21) Subsequently, petitioner GLI received RDO's Victorino's Letter dated 20 February 2020 (**Second Denial Letter**), denying its Request for Reconsideration.

No cross-examination was conducted.[42]

On 15 October 2020, after completing the presentation of their testimonial evidence, petitioners filed their "Formal Offer of Evidence with Motion to Adopt Correct Exhibit Markings and Replacement of Documentary Exhibits"[43] (**FOE with Motion**) consisting of Exhibits "P-1" to "P-62", inclusive of sub-markings. Respondent failed to file his or her comment thereto despite due notice.[44]

In the Resolution dated 17 March 2021[45], the Second Division granted petitioners' *Motion to Adopt Correct Exhibit Markings and Replacement of Documentary Exhibits* (contained in their FOE). As regards the replacement of document, *i.e.*, original copy of the "Certificate of No Issued [Electronic Certificate Authorizing Registration (**eCAR**)]" provisionally marked as Exhibit "P-62", the Court set a hearing on 14 April 2021 to recall petitioners' witness, Ng, for purposes of identifying and verifying the said original document.

On 01 June 2021, however, the Second Division reset the presentation of recalled witness, Ng, to 16 June 2021.[46]

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[42] TSN dated 09 September 2020, p. 13.
[43] Division Docket, Volume II, pp. 529-541.
[44] See Records Verification dated 29 January 2021 and 11 February 2021, id., pp. 674 and 678, respectively.
[45] Id., pp. 683-684.
[46] See Notice of Resetting dated 01 June 2021, id., p. 685.

On 15 June 2021, petitioners filed an "Urgent Motion to Set the Presentation of Witness (Marjorie Jane D. Ng) for Video Conferencing Hearing"[47] (**Urgent Motion**), stating that witness and petitioners' President, Ng, cannot attend the scheduled hearing in open court because she has a comorbidity that puts her at risk of contracting the COVID-19 virus and requesting the Second Division to conduct the hearing through videoconference at another hearing date.

During the 16 June 2021 hearing, the Second Division granted the motion of petitioners' counsels for the conduct of a videoconference hearing (for the same reason mentioned in petitioners' Urgent Motion) and thereby, reset the presentation of recalled witness, Ng, to 12 July 2021.[48]

At the 12 July 2021 videoconference hearing, Ng identified her Supplemental Judicial Affidavit dated 11 June 2021[49] where she declared that:

(1) On 07 July 2020, Revenue Officer Mark Kevin B. Tiu (**RO Tiu**), the examiner in charge of petitioners' applications for erroneously paid CGT and DST, requested the submission of (**a**) Certificate of No Similar Claim with the Court of Tax Appeals (**CTA**), (**b**) Notarized Board Resolution or Secretary's Certificate authorizing petitioners' representative/s to file the refund applications and (**c**) Certificate of No Issued eCAR issued by BIR RDO No. 54A-East Cavite;

(2) After getting confirmation that the above request is for record purposes only, she asked petitioners' external legal counsel to proceed with the transmittal of the said documents;

(3) Petitioners secured a Certificate of No Issued eCAR from BIR RDO No. 54A-East Cavite dated 14 October 2020, signed by Revenue Officer II, Arlene A. Mojica (**RO Mojica**), certifying that there was no CAR issued between the seller, petitioner TDI, and the buyer, petitioner GLI, from 04 October 2020 to date; and,

47 Id., pp. 701-703.
48 See Minutes of the Hearing and Order, both dated 16 June 2021, id., pp. 704 and 705, respectively.
49 Exhibit "P-63", id., pp. 692-697, with attached copy of Exhibit "P-62" that witness Marjorie Jane D. Ng identified.

(4) The said Certificate of No Issued eCAR dated 14 October 2020 is provisionally marked as Exhibit "P-62".

On 22 July 2021, after completing the presentation of the recalled witness, Ng, petitioners filed their "Supplemental Formal Offer of Evidence with Manifestation"[50] (**Supplemental FOE with Manifestation**) consisting of Exhibits "P-62" to "P-63-1". Respondent filed his or her Comment[51] thereto on 29 July 2021.

In the Resolution dated 26 November 2021[52], the Second Division admitted all of petitioners' exhibits, *i.e.*, Exhibits "P-1" to "P-63-1".

For respondent part, RO Tiu was presented as his or her sole witness. RO Tiu testified through his Judicial Affidavit, dated 22 July 2020[53], where he declared that:

(1) His duties as an RO assigned at the Assessment Section of RDO No. 54A-East Cavite include, among others, the investigation or examination of all internal revenue tax cases;

(2) He was tasked to audit or verify petitioners' administrative claims for refund of CGT and DST arising from the revocation and cancellation of the Deeds of Absolute Sale on 05 February 2018;

(3) TVN Nos. 201600012988[54] and 201600012989[55], both dated 12 December 2018 were issued to him and duly served to petitioners;

(4) He conducted the audit investigation based on the documents submitted by petitioners;

(5) He issued a Memorandum dated 22 January 2019[56], recommending the denial of petitioner GLI's claim for refund of erroneously paid DST; and,

(6) Since the case involved legal intricacies, he requested for and used as basis for the denial the Legal Opinion of the Legal Division of RR No. 9A-CaBaMiro, stating that DST is levied independently of

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50 Id., pp. 711-714.
51 Id., pp. 715-717.
52 Id., pp. 722-724.
53 Exhibit "R-4", id., pp. 517-522.
54 Exhibit "R-1-1", BIR Records, TDI Folder, p. 16.
55 Exhibit "R-1", id., GLI Folder, p. 34.
56 Exhibit "R-3", id., pp. 81-83.

> the legal status of the transaction that gave rise thereto and thus, must be paid upon the issuance of the instrument covering the transaction.

During cross-examination, RO Tiu clarified that even when a contract is subsequently rescinded or declared void or unenforceable, the DST should still be levied on the transaction covered by that contract.[57] He also mentioned that CGT is payable within thirty (30) days from notarization.[58] Then, when asked regarding the lack of specific legal basis for the denial of the claim for refund of erroneously paid CGT, he admitted that there was no denial as to the CGT.[59] He also confirmed the grant of refund of erroneously paid CGT amounting to ₱1,715,712.00; but, as far as he is concerned, respondent is only pursuing petitioners' claim for refund of erroneously paid DST in this case.[60]

No redirect examination was conducted.[61]

On 10 March 2022, respondent filed his or her FOE[62] consisting of Exhibits "R-1" to "R-5", inclusive of sub-markings. Petitioners filed their "Comments/Objections to Respondent's Formal Offer of Evidence"[63] on 22 March 2022.

In the Resolution dated 22 June 2022[64], the Second Division admitted respondent's exhibits, *except* Exhibit "R-2"[65], for not being found in the records, and Exhibit "R-3"[66], for being a mere photocopy. The Court then gave the parties a period of 30 days within which to submit their respective memoranda.

On 07 July 2022, respondent filed his or her Memorandum.[67] Petitioners, on the other hand, filed their Memorandum on 29 July

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57 TSN dated 16 February 2022, p. 7.
58 Id., p. 8.
59 Id., p. 9.
60 Id., pp. 10-11.
61 Id., p. 12.
62 Division Docket, Volume II, p. 729-732.
63 Id., pp. 734-737.
64 Id., pp. 741-742.
65 Revised Checklist of Mandatory Requirements for Claims of Refund.
66 Memorandum dated 22 January 2019, supra at note 56.
67 Division Docket, Volume II, pp. 743-752.

2022.[68] Accordingly, on 05 August 2022, the Second Division considered the case submitted for decision.[69]

ISSUE

As the parties so stipulated[70], the sole issue for this Court's determination is —

> WHETHER PETITIONERS GREAT LANDHO, INC. (GLI), TT&T DEVELOPMENT, INC. (TDI) AND TAMA PROPERTIES, INC. (TPI) ARE ENTITLED TO THE REFUND OF THEIR ALLEGED ERRONEOUSLY PAID OR REMITTED CAPITAL GAINS TAX (CGT) AND DOCUMENTARY STAMP TAX (DST) IN THE AGGREGATE AMOUNT OF ₱15,879,456.00.

Petitioners submit that the amounts of CGT and DST paid pursuant to the sale transactions that were subsequently cancelled should be considered erroneously paid taxes, hence, should be recovered as tax refund or credit under Section 229[71] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

As to the amounts paid for CGT, petitioners insist that based on Section 27(D)(5)[72] of the NIRC of 1997, as amended, Revenue Memorandum Circular (**RMC**) No. 35-2017[73] and *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*[74] (**SMI-Ed**), the obligation to pay CGT is conditioned on two (2) factors: (1) there is a sale, transfer or exchange; and, (2) there must be a profit or gain presumed to have been realized by the seller by means of the said transfer. Since there was no sale, transfer or exchange as a result of the revocation or cancellation of the subject Deeds of Absolute Sale, no gain

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68 Id., pp. 754-775.

69 See Resolution dated 05 August 2022, id., p. 777.

70 II. Stipulation of Issue, JSFI, supra at note 35, p. 347.

71 **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected.*

72 **SEC. 27**. *Rates of Income Tax on Domestic Corporations.* —

...

(D) *Rates of Tax on Certain Passive Incomes.* —

...

(5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* — ...

...

73 Clarification on the Imposition of Capital Gains Tax on Sale, Exchange or Other Disposition of Real Properties.

74 G.R. No. 175410, 12 November 2014.

was realized to which the CGT would have attached. Accordingly, the payment of CGT for the subject sale transactions must be deemed erroneous as the basis for such imposition has ceased to exist.

Petitioners further note that since respondent has already granted the refund of erroneously paid CGT in the amount of ₱1,715,712.00 (pertaining to the revoked sale transaction involving petitioner TPI's real properties), there is sufficient basis to similarly grant the refund of erroneously paid CGT in the amount of ₱12,360,422.40 (pertaining to the revoked sale transaction involving petitioner TDI's real properties).

As to the amounts paid for DST, petitioners argue that the revocation of the subject sale transactions also resulted in the cancellation of the taxable event that would have triggered the imposition of DST under Section 196[75] of the NIRC of 1997, as amended. Stated otherwise, there being no sale, disposition or transfer of parcels of land from petitoners TDI and TPI to petitioner GLI, petitioners claim that they are not liable to pay DST.

Citing the Supreme Court's ruling in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[76] that DST under Section 196 is imposed on the transfer of realty by way of sale and the CTA's ruling in *Professional Services, Inc. (PSI) v. Commissioner of Internal Revenue*[77] that DST is not intended to be tax on the document alone, petitioners posit that the transaction must be consummated or that there must be an actual transfer of ownership of the real property involved before the DST liability attaches.

Since there was no sale, transfer or exchange as a result of the revocation or cancellation of the subject Deeds of Absolute Sale, petitioners contend that their DST payments for the subject sale transactions must be deemed erroneous as the basis for such imposition has likewise ceased to exist.

Respondent, on the other hand, counter-argues that petitioners' CGT and DST payments were not erroneously collected, as the said taxes

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75 **SEC. 196.** *Stamp Tax on Deeds of Sale and Conveyances of Real Property.*
76 G.R. No. 192398, 29 September 2014.
77 C.T.A. Case No. 6218, 04 December 2002.

on the subject sale transactions accrued on the day of the execution of the valid contracts of sale of real properties pursuant to Sections 27(D)(5)[78] and 196[79] of the NIRC of 1997, as amended. Considering that the contracts entered into between petitioners were perfectly valid prior to the revocation of the sale transactions, respondent maintains that petitioners are nonetheless liable for the corresponding CGT and DST.

Respondent likewise posits that rescission of the subject contracts of sale cannot happen because none of the grounds under Article 1381[80] of the Civil Code of the Philippines are present in the instant case.

Furthermore, citing the Supreme Court's ruling in *Philippine Home Assurance Corporation, et al. v. Court of Appeals and Commissioner of Internal Revenue*[81] (**Philippine Home Assurance**), respondent asserts that DST is a tax not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business; hence, it must be paid upon the issuance of the specific instrument (such as a Deed of Absolute Sale), without regard to whether the contract which gave rise thereto is rescissible, void, voidable, or unenforceable.

RULING OF THE COURT

After a careful review of the case records and the parties' contrasting arguments, this Court finds partial merit in the instant Petition for Review.

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78 Supra at note 72.

79 Supra at note 75.

80 ARTICLE 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

81 G.R. No. 119446, 21 January 1999.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[82] Thus:

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (c) Credit or refund taxes **erroneously** or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund. [83]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause** that may arise

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[82] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015.

[83] Emphasis and underscoring supplied.

> after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[84]
>
> ...

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[85]

(2) If the administrative claim for refund is denied or not acted upon within said two (2)-year period, the judicial claim for refund must be filed with the CTA within 30 days from receipt of the denial AND within the said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;[86] and,

(3) The claim for refund must be a categorical demand for reimbursement.[87]

As to the ***first and second requirements***, the pertinent dates of petitioners' administrative and judicial claims are as follows:

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[84] Emphasis supplied.

[85] See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

[86] See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

[87] *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

Payor	Tax Involved	Date of Payment	Amount Paid	Two (2)-Year Prescriptive Period	Date of Admin. Claim	Date of Judicial Claim
Petitioner TDI	CGT	10 October 2017[88]	₱12,360,422.40	10 October 2019	17 October 2018[89]	10 October 2019[90]
Petitioner GLI	DST	27 October 2017[91]	3,090,105.60	27 October 2019	16 August 2018[92]	
Petitioner GLI	DST	27 October 2017[93]	428,928.00	27 October 2019	16 August 2018[94]	
Total			**₱15,879,456.00**			

However, with respect to the application for refund of alleged erroneously paid DST, the records of the case show that petitioner GLI received RDO Victorino's First Denial Letter[95] on 29 January 2019. Petitioner GLI then filed a Request for Reconsideration on 12 March 2019[96], which RDO Victorino later on denied in her Second Denial Letter dated 20 February 2020 (as testified to by petitioners' witness, Ng).[97]

In the leading case of *Gibbs v. Collector of Internal Revenue and Court of Tax Appeals*[98], the Supreme Court held:

> ...
>
> ... A taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both [Section 306 (now Section 229) of the National Internal Revenue Code and Section 11 of Republic Act No. 1125]; that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 [now Section 229] of the National Revenue Code, and appeal to the Court of Tax Appeals **within 30 days from receipt of the Collector's decision or ruling denying his claim for refund**, as required by said Section 11 of Republic Act No.

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88 Paragraph 1(f), I. Stipulation of Facts, JSFI, supra at note 35, p. 346.
89 Exhibit "P-42", Division Docket, Volume II, p. 653.
90 Paragraph 1(k), I. Stipulation of Facts, JSFI, supra at note 35, p. 347.
91 Supra at note 88.
92 Exhibit "P-40", Division Docket, Volume II, p. 651.
93 Supra at note 88.
94 Exhibit "P-41", Division Docket, Volume II, p. 652.
95 Exhibit "P-55", supra at note 22.
96 Exhibit "P-56", supra at note 23.
97 See Judicial Affidavit of Marjorie Jane D. Ng dated 24 June 2020, Exhibit "P-59", supra at note 41, pp. 391-392.
98 Supra at note 86; Emphasis supplied.

> 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 [now Section 229] and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.
>
> ...

As can be gleaned from the foregoing, the petition for refund must be filed with the CTA within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause; otherwise, *the claim for refund shall have prescribed.*

Applying the foregoing to the instant case, counting 30 days from petitioner GLI's receipt of RDO Victorino's First Denial Letter[99] on <u>29 January 2019</u>, it had **<u>until 28 February 2019</u>** within which to file its judicial claim before this Court. Clearly, since the instant petition was filed only on <u>10 October 2019</u>, petitioner GLI's claims for refund of erroneously paid DST have already prescribed.

As it stands, only petitioner TDI's claim for refund of erroneously paid CGT is timely filed before this Court.

Anent the ***third and last requirement***, a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the CIR. The claimant must show indubitably the specific provision of law from which his or her right arises. It cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.[100]

Here, petitioners assert that since the subject sale transactions involving the real properties (purchased by petitioner GLI from petitioners TDI and TPI) were revoked or cancelled, the corresponding

99 Exhibit "P-55", supra at note 22.
100 See *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, supra at note 87.

CGT and DST paid thereon should be deemed erroneously paid and, for this reason, respondent is legally bound to refund the same.

Respondent, on the other hand, claims that the CGT and DST were not erroneously paid or illegally collected since the said taxes accrued on the day of the execution of a valid contract of sale of real properties and it is undisputed that petitioners entered into valid contracts of sale.

i. PETITIONER TT&T DEVELOPMENT, INC. (TDI) IS ENTITLED TO THE REFUND OF ERRONEOUSLY PAID CAPITAL GAINS TAX (CGT).

We find merit in petitioner TDI's argument that pursuant to Section 27(D)(5) of the NIRC of 1997 and RMC No. 35-2017[101], there must be a sale, transfer or exchange of real property in order to be liable for CGT, to wit:

Section 27(D)(5) of the NIRC of 1997, as amended, states:

> ...
>
> **SEC. 27.** *Rates of* ***Income tax*** *on Domestic Corporations.* —
>
> ...
>
> (D) *Rates of Tax on Certain Passive Incomes.* —
>
> ...
>
> (5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* — A final tax of six percent (6%) is hereby imposed on the gain presumed to have been **realized on the sale, exchange or disposition of lands and/or buildings** which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price of fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings.[102]
>
> ...

In addition, RMC No. 35-2017 provides:

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101 Supra at note 73.
102 Italics in the original text and emphasis supplied.

> ...
>
> The mere issuance of tax declaration without any sale, exchange, or disposition is not subject to capital gains tax. **Likewise, there must be transfer of ownership that resulted from sale, disposition or conveyance of real property**. The payment of the capital gains tax is dependent and is a direct consequence of the sale, transfer or exchange. It is not the transfer of ownership or possession *per se* that subjects the sale/transfer/exchange of the 6% capital gains tax but **the profit or gain that was presumed to have been realized by the seller** by means of said transfer as can be clearly seen from the provisions of Sections 24(D)(1) and 25(D)(5) of the Tax Code.[103]
>
> ...

Clearly from the foregoing, CGT, as a form of tax on income, is imposed on the sale, exchange or disposition of lands and/or buildings, which are not actually used in the business of a corporation and are treated as capital assets. Therefore, to determine whether petitioner TDI, the payor of the CGT amounting to ₱12,360,422.40, is entitled to refund, it is important to ascertain whether there was a sale, exchange or disposition of lands and/or buildings.

Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following: (**a**) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (**b**) determinate subject matter; and, (**c**) price certain in money or its equivalent.[104] It appears that all the essential elements of a contract of sale are present in the instant case.

As borne by the records, on 04 October 2017, a Deed of Absolute Sale[105] was entered into between petitioner GLI, as buyer, and petitioner TDI, as seller, for the purchase of various parcels of land situated in Brgy. Hugo Perez, Trece Martires City, Cavite (covered by TCT Nos. T-67136, T-67137, T-67138, T-67139, T-81847, O77-2015000683 and O77-2015000684) at a gross selling price of ₱74,106,600.00. However, the issue in this case cannot be resolved based solely on the fact that this particular contract of sale is valid.

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[103] Emphasis supplied.

[104] *Romulo A. Coronel, et al. v. The Court of Appeals, et al.*, G.R. No. 103577, 07 October 1996.

[105] Exhibit "P-10", supra at note 6.

It should be noted that on 05 February 2018, around four (4) months *after* the execution of the aforesaid Deed of Absolute Sale and *before* the titles on the properties subject thereof could be transferred to petitioner GLI, petitioners GLI and TDI mutually entered into a Revocation/Cancellation of Deed of Absolute Sale[106] due to a change in management plans, as testified to by petitioners' witness, Ng. [107] The action thus taken by both parties was in the nature of mutual desistance — what Manresa terms "*mutuo disenso*" - which is a mode of extinguishing obligations. It is a concept that derives from the principle that since mutual agreement can create a contract, mutual disagreement by the parties can cause its extinguishment.[108]

The mutual cancellation of the subject contract of sale necessarily involves restoration of the parties to the *status quo ante* prevailing immediately prior to the execution of the Deed of Absolute Sale, *i.e.*, as if no sale had been perfected.[109] This is in consonance with the basic principle that when an obligation has been extinguished or resolved, it is the duty of the court to require the parties to surrender whatever they may have received from the other so that they may be restored, as far as practicable, to their **original situation.**[110]

This Court also finds respondent's contention that rescission of the subject contract sale between petitioners GLI and TDI cannot happen because none of the grounds under Article 1381[111] of the Civil Code of the Philippines are present in the instant case, incorrect. Articles 1381 and 1382[112] of the Civil Code of the Philippines specify the causes or grounds that will make a contract rescissible. These provisions do not refer to contracts that are dissolved by mutual consent of the contracting parties.

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106 Exhibit "P-23", supra at note 17, pp. 595-601.
107 See Judicial Affidavit of Marjorie Jane D. Ng dated 24 June 2020, Exhibit "P-59", supra at note 41, pp. 382-383.
108 *Saura Import & Export Co., Inc. v. Development Bank of the Philippines*, G.R. No. L-24968, 27 April 1972.
109 See *Floro Enterprises, Inc. v. Court of Appeals, et al.*, G.R. No. 105649 (Resolution), 18 October 1995.
110 Id., See *Agustin v. Court of Appeals*, 186 SCRA 375 (1990); *Magdalena Estate, Inc. v. Myrick*, 71 Phil. 344 (1941); *Po Pauco v. Siguenza, et al.*, 49 Phil. 404 (1926).
111 Supra at note 80.
112 ART. 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible.

The remedy of rescission in the case of rescissible contracts under Article 1381 of the Civil Code of the Philippines should not be confused with the remedy or action for rescission, or more properly termed "resolution" of reciprocal obligations under Article 1191[113] of the Civil Code of the Philippines. The latter may either be done by mutual consent of the parties or by filing a complaint for rescission under Article 1191 before the court. However, the former may only be done through filing a separate action before the court and only after a full-blown trial as provided in Article 1383[114] of the Civil Code of the Philippines.[115]

Based on the foregoing, since petitioners GLI and TDI mutually agreed to rescind[116] the Deed of Absolute Sale[117], the sale transaction was not consummated and thus, no actual conveyance or transfer of real properties was made between them. As a direct consequence, the seller, *i.e.*, petitioner TDI, derived no income thereon that is subject to CGT.

Settled is the rule that three (3) elements must concur in order to impose a tax on income: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and, (3) it is not exempted by law or treaty from income tax.[118] Thus, as regards the *first* and *second* requisites, since no income was realized or received, whether actual or constructive, from the revoked sale transaction involving petitioner TDI's real properties, no CGT should have been paid thereon. Consequently, petitioner TDI has sufficiently established its entitlement to the refund of erroneously paid CGT on the said mutually rescinded sale.

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113 ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

114 ART. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

115 See *Air France v. Honorable Court of Appeals, et al.*, G.R. No. 104234, 30 June 1995.

116 Exhibit "P-23", supra at note 17, pp. 595-601.

117 Exhibit "P-10", supra at note 6.

118 *Commissioner of Internal Revenue v. The Court of Appeals, et al.*, G.R. No. 108576, 20 January 1999.

ii. PETITIONER GREAT LANDHO, INC. (GLI) IS *NOT* ENTITLED TO THE REFUND OF ITS DOCUMENTARY STAMP TAX (DST) PAYMENTS.

Even assuming *arguendo* that petitioner GLI's claims for refund of erroneously paid DST have not prescribed, the same would still fail.

Section 196 of the NIRC of 1997, as amended, mandates the imposition of DST on all conveyances, deeds, instruments, or writings whereby realty sold shall be transferred or otherwise conveyed to the purchaser, to wit:

> ...
>
> SEC. 196. *Stamp Tax on Deeds of Sale and Conveyances of Real Property.* — **On all conveyances, deeds, instruments, or writings**, other than grants, patents or original certificates of adjudication issued by the Government, **whereby any land, tenement 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 rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: *Provided*, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration.
>
> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed One thousand pesos (₱1,000), fifteen pesos (₱15.00).
>
> (b) For each additional One thousand pesos (₱1,000), or fractional part thereof in excess of One thousand pesos (₱1,000) of such consideration or value, Fifteen pesos (₱15.00). [119]
>
> ...

Relative thereto, Section 163 of Revenue Regulations (**RR**) No. 26-24, or the Revised Documentary Stamp Tax Regulations, provides that:

[119] Italics in the original text and emphasis supplied.

> ...
>
> SEC. 163. *Contract for Sale of Land.* — **If contract for the sale of land <u>vests title</u> on the land and improvements thereon, it would be <u>subject to taxation as a conveyance</u>.** If it does not vest title but contains only certain provisions for the giving of a deed in the future upon compliance with conditions precedent, it is not subject to tax.[120]
>
> ...

Clearly from the foregoing, DST on the sale and conveyance of real property as prescribed in Section 196 above, accrues upon the transfer of ownership over the property sold through the execution of a contract of sale or deed of absolute sale. As a rule, the execution of a deed of absolute sale constitutes constructive delivery of ownership in the absence of stipulation to the contrary.[121]

A careful examination of the notarized Deeds of Absolute Sale[122] executed by petitioners shows that there is no such stipulation reserving the title or ownership over the subject real properties to petitioners TDI and TPI nor does it give them the right to unilaterally rescind the said contracts for any reason such as, in this case, a change in management plans. Thus, upon the due execution of the Deeds of Absolute Sale, ownership over the real properties sold have already been transferred to petitioner GLI by way of constructive delivery.

As to the effect of the subsequent mutual cancellation or revocation of the subject Deeds of Absolute Sale on the imposition of DST, the Supreme Court's ruling in *Philippine Home Assurance*[123] is instructive:

> ...
>
> In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are

120 Italics in the original, emphasis and underscoring supplied.
121 See *Emilio A. Salazar and Teresita Dizon v. Court of Appeals and Jonette Borres*, G.R. No. 118203, 05 July 1996.
122 Exhibits "P-10" and "P-11", supra at notes 6 and 7.
123 Supra at note 81; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property.
>
> **Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto.** The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to **whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable**. As the Supreme Court of the United States held in *Du Pont v. United States*:
>
>> The tax is not upon the business transacted but is **an exercise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business.** It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. **In this view it is immaterial whether the transfer of the account constituted a sale.**
>
> ...

Following the foregoing pronouncement, DST must be paid upon the issuance of the instrument evidencing the transfer or conveyance of real property, irrespective of whether the contract that gave rise to it is rescissible, void, voidable, or unenforceable. This is so precisely because DST under Section 196[124] of the NIRC of 1997, as amended, is an excise tax imposed on the privilege to transfer or convey a real property through the execution of a Contract of Sale or a Deed of Absolute Sale and not upon the transfer or conveyance itself.

Accordingly, the subsequent mutual cancellation or revocation of the instrument embodying the transaction to which the DST liability attaches does not have the effect of cancelling such liability. As applied to this case, the subsequent mutual rescission or cancellation[125] of the sale transactions did not operate to cancel the DST liability due on the duly executed Deeds of Absolute Sale[126] embodying the transfer of real properties (purchased by petitioner GLI from petitioners TDI and TPI).

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124 Supra at p. 26.
125 Exhibits "P-23" and "P-24", supra at note 17.
126 Exhibits "P-10" and "P-11", supra at notes 6 and 7.

Given that petitioners entered into valid contracts of sale of real properties, the subsequent mutual cancellation or revocation thereof becomes immaterial with respect to the DST liability due thereon. This is because petitioners TDI and TPI had already exercised the privilege to transfer or convey their respective real properties to petitioner GLI upon the due execution of the Deeds of Absolute Sale. That being said, the subject DST payments[127] cannot be considered erroneous and thus, petitioner GLI failed to prove its entitlement to a refund thereof.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioners Great Landho, Inc., TT&T Development, Inc. and Tama Properties, Inc. on 10 October 2019, is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner TT&T Development, Inc. in the total amount of **₱12,360,422.40**, representing the erroneously paid CGT.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

[127] Exhibits "P-19" and "P-21", supra at notes 12 and 13.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice