REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LANDBANK COUNTRYSIDE DEVELOPMENT FOUNDATION, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5879

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 19 2001

x - x

DECISION

The case at bar seeks the refund of the amount of P10,408,851.60 allegedly representing Petitioner's erroneously withheld and paid income tax for the taxable year 1997.

As represented, Petitioner is a non-stock, non-profit organization organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Unit 2107, Cityland II, H.V. de la Costa St., Salcedo Village, City of Makati. Its main purpose is to establish and operate a private, non-profit foundation which shall initiate, stimulate, encourage, promote, develop, support, assist, undertake, finance, provide, manage, operate and/or maintain programs, plans, projects or enterprises for the improvement, promotion and advancement of agrarian reform beneficiaries, farmers, tillers, fishermen and other agricultural workers and the social and economic development of the countryside (Exhs. A and B).

On November 24, 1992, Petitioner registered with the Bureau of Internal (BIR) as a donee institution under BIR NEDA Regulations No. 1-81 (Exh. D).

On September 14, 1993, Petitioner was recognized by the BIR as a corporation exempt from the payment of income taxes under Section 26 (now Section 30) of the Tax Code, as evidenced by a letter addressed to it signed by then Deputy Commissioner Rene Bañez (Exh. E).

On March 11, 1995, the Landbank of the Philippines donated to Petitioner a 3.4 hectare lot located in Nancayasan, Urdaneta, Pangasinan.

On April 18, 1997, Petitioner sold the said lot to Antonio Dy, Rody Sy, Victoria Tan, Esperanza Chua, Elena Young, John Chu, Alexander Chu, Napoleon Chu, Honorio Chu and Corazon Dy for P32,500,000.00 (Exh. G). The said amount was used by Petitioner to finance its various projects pursuant to its main purpose (pp. 13 to 16, TSN, March 8, 2000).

From the selling price of P32,500,000.00, the amount of P2,437,500.00 representing 7.5% of the selling price was withheld and remitted to the BIR on May 8, 1997 in order to be able to process the transfer of the title to the land to the buyers (Exh. I, p. 9, TSN, January 12, 2000).

On April 15, 1998, Petitioner filed its Annual Information/Income Tax Return of Exempt Organization, declaring therein a taxable income of P29,739,756.00 [which came from the aforementioned sale of lot (Exh. F-2)], an income tax due of P10,408,851.00, a tax credit/payment of P2,437,500.00, and an amount due and collectible by the BIR totaling P7,971,351.60, which Petitioner paid on the same date (Exhs. F and F-1).

On the theory that the said tax payments in the total amount of P10,408,851.00 was erroneous, as it is not subject to income tax under Section 26 (now Section 30) of the Tax Code, Petitioner filed an administrative claim for refund with the office of the Respondent on May 6, 1999 (Exh. K).

The next day or on May 7, 1999, Petitioner filed with this Court the instant Petition for Review.

Petitioner principally submitted that it is tax exempt under Section 26(g) [now Section 30(g)] of the Tax Code, quoted below, hence, the refund is in order. It said that its tax exempt status was confirmed by the BIR in its letter to Petitioner dated September 14, 1993 (Exh. E).

> "**Section 26.** ***Exemptions from tax on corporations.*** - The following organizations shall not be taxed under this Title in respect to income received by them as such – x x x
>
> (g) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare."

Further, it stated that the last paragraph of Section 26 (now Section 30) of the Tax Code, also quoted below, does not apply to the case at bar for the reason that the sale of the subject donated property was not done in pursuit of any intent to engage in the real estate business and was a mere isolated transaction, hence, citing the case of **Maynilad Cultural Foundation, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5625, March 12, 1999** and BIR Ruling No. 034-98, dated April 13, 1998 involving the

Philippine Tuberculosis Society, Inc., Petitioner concluded that the income derived from the sale of the donated realty, which will be used to pursue its purposes, is exempt from income tax.

> "**Section 26.** ***Exemptions from tax on corporations.*** - x x x
>
> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organization from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income shall be subject to the tax imposed under this Code."

Moreover, it pointed out that the claim for refund was well within the two (2) year period required by Section 204(C) [formerly Section 204(3) and Section 229 (formerly Section 230)] of the Tax Code, which provides:

> "**Section 204**. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may – x x x
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> > (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 payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered a written claim for credit or refund. x x x."
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> "**Section 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.
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> 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 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."

On the other hand, Respondent in his answer raised the herein special and affirmative defenses, that (1) the two-year period required under Section 204(C) of the National Internal Revenue Code of 1997 within which to claim the refund had already elapsed when it filed the instant Petition for Review; (2) the exemption from income tax granted to corporations falling under Section 26(g) [now Section 30(G)] of the NIRC, granting *arguendo* that Petitioner belongs under such category, does not include income of whatever kind and character of the aforesaid organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income pursuant to the last paragraph of said provision of law; (3) the petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid; (4) in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; (5) taxes paid and collected are presumed to have been collected in accordance with law and regulations, hence, not refundable; and (6) well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation.

On September 27, 2000, this case was considered submitted for decision *sans* the evidence and memorandum of the Respondent.

With respect to the issue of prescription raised by Respondent, records show that Petitioner complied with the aforestated statutory requirements by filing a written claim for refund with the Respondent on May 6, 1999 and a Petition for Review in this Court on May 7, 1999. Reckoned from the date when Petitioner paid the claimed income taxes on April 15, 1998, the claims for refund, both in the administrative and judicial levels were filed within the two (2) year period required by law, thus the issues left for our consideration may be simplified into two and these are (1) WHETHER OR NOT THE INCOME OF PETITIONER FROM THE SALE OF THE DONATED REALTY IS EXEMPT FROM INCOME TAX AND (2) WHETHER OR NOT PETITIONER HAS ADDUCED SUFFICIENT EVIDENCE TO WARRANT THE REFUND OF THE AMOUNT CLAIMED.

The first issue must be answered in the negative. Petitioner's income from the sale of the donated real property is not exempt from income tax. The last paragraph of Section 26 (now Section 30) of the Tax Code, *supra*, is very clear that income of whatever kind and character of the exempt corporations, mentioned in the said provision of the Tax Code, from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income, shall be subject to income tax. Hence, all income of an exempt corporation mentioned in Section 26 (now Section 30) of the Tax Code is subject to income tax, even if the said income comes or arises from a single isolated transaction of incidental character. It need not be characterized by regularity, habituality and continuity suggesting an intention to engage in business for the purpose of profit. Any income of an exempt corporation under Section 26 (now Section 30) is always a taxable income. Clearly, Petitioner's income from the sale of the donated realty is covered by the last paragraph of Section 26 (now Section 30) of the Tax Code, thus, is subject to income tax.

This interpretation is pursuant to the case of **Commissioner of Internal Revenue vs. Court of Appeals and YMCA, G.R. No. 124043, October 14, 1998, 298 SCRA 83,** the Supreme Court ruled that the very wording of the last paragraph of therein Section 27 (now Section 30) of the Tax Code mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal, shall be subject to income tax. Pertinent portions of the said decision of the Supreme Court are quoted hereunder, thus:

> "In the instant case, the exemption claimed by the YMCA is expressly disallowed by the very wording of the last paragraph of then Section 27 of the NIRC which mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal, be subject to the tax imposed by the same Code. Because the last paragraph of said section unequivocally subjects to tax the rent income of the YMCA from its real property, the Court is duty-bound to abide strictly by its literal meaning and to refrain from resorting to any convoluted attempt at construction.
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> It is axiomatic that where the language of the law is clear and unambiguous, its express terms must be applied. Parenthetically, a consideration of the question of construction must not even begin, particularly when such question is on whether to apply a strict construction or a liberal one on statutes that grant tax exemptions to "religious, charitable and educational propert[ies] or institutions.
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> The last paragraph of Section 27, the YMCA argues, should be "subject to the qualification that the income from the properties must arise from activities 'conducted for profit' before it may be considered taxable. This argument is erroneous. As previously stated, a reading of said paragraph ineludibly shows that the income from any property of exempt

> organizations, as well as that arising from any activity it conducts for profit, is taxable. The phrase "any of their activities conducted for profit" does not qualify the word "properties." This makes income from the property of the organization taxable, regardless of how that income is used – whether for profit or for lofty non-profit purposes."

The facts and circumstances in the case of Maynilad Cultural Foundation, Inc. cited by the Petitioner is different from the instant case. In the cited case, Maynilad was forced to sell its lot because of the refusal of the Homeowners Association to grant its permit to build. The proceeds from the sale was immediately utilized to buy another property which it bought at a higher price to be used as the foundation's center. The intent to sell properties for gain is definitely absent. While in the present case, the property was sold at a gain and in fact what is being claimed for refund is not only the withholding tax on the sale of the real property but other income taxes paid as well on a total taxable income of P29,739,756.00.

With the aforesaid discussions, this Court ruled that petitioner's income from the sale of the donated real property is subject to income tax, hence, the instant claim for refund of Petitioner is not in order.

With our ruling on the first issue, the Court finds no reason to delve into the second issue, as the same becomes moot and academic.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
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