

FIRST DIVISION

[G.R. No. 217898, January 15, 2020]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BASES CONVERSION AND DEVELOPMENT AUTHORITY, RESPONDENT.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This petition for review^[1] assails the following dispositions of the Court of Tax Appeals (CTA) En Banc in CTA EB Case No. 1123 (CTA Case No. 8140) entitled "*Commissioner of Internal Revenue v. Bases Conversion and Development Authority*:"

1. Decision^[2] dated December 16, 2014 granting the claim for tax refund of respondent Bases Conversion and Development Authority (BCDA); and,
2. Resolution^[3] dated April 15, 2015, denying the motion for reconsideration of petitioner Commissioner of Internal Revenue (CIR).

Antecedents

Respondent BCDA was the owner of four (4) real properties in Bonifacio Global City, Taguig City which had a total area of 12,036 sq. m.. The lots were collectively referred to as the "Expanded Big Delta Lots." It entered into a contract to sell with the "Net Group," an unincorporated joint venture composed of four (4) corporations: (1) 18-14 Property Holdings, Incorporated; (2) 14-8b Property Holdings, Inc.; (3) The Net Group Project Management Corporation; and (4) The Net Group Property Management Corporation. The total purchase price was Php2,032,749,327.96. The "Net Group" committed *not* to remit to the Bureau of Internal Revenue (BIR) the total amount of Php101,637,466.40 as Creditable Tax Withheld at source (CWT) to give time to respondent to present a certification of tax exemption on or before June 9, 2008.

On May 28, 2008, respondent sought from petitioner the aforesaid certification but the CIR did not respond.

On July 31 2008, respondent and the "Net Group" executed the corresponding Deeds of Absolute Sale. In view of respondent's failure to present a certification of tax exemption, the "Net Group" deducted the amount of Php101,637,466.40 as CWT and issued to respondent the corresponding certificates of creditable tax withheld at source.^[4] The "Net Group" remitted the amount to the BIR Regional District Office No. 44.

On March 9, 2009, respondent wrote the BIR for refund of the amount but, again, petitioner did not respond.

On July 29, 2010, respondent sought affirmative relief from the CTA, specifically for refund of the amount in question. Respondent claimed that it was exempt from all taxes and fees arising from or in relation to the sale, as provided under its charter, Republic Act (RA) 7227, as amended by RA 7917.

In its answer, petitioner countered that respondent failed to support its claim for tax refund. In particular, respondent allegedly failed to show, by competent evidence, that the CWT was erroneously or illegally withheld. Respondent's claim for tax refund purportedly did not comply with the procedural requirements. Besides, all taxes paid to the BIR are presumed lawful and proper.

Ruling of the CTA First Division

In its Decision dated September 13, 2013, the CTA First Division ruled in respondent's favor, *viz.*:

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent Commissioner of Internal Revenue is ORDERED to REFUND in favor of petitioner BASES CONVERSION DEVELOPMENT AUTHORITY the amount of P101,637,466.40, representing creditable withholding tax paid on July 31, 2008 in connection with the sale/disposition of the 12,036 square-meter property, otherwise known as the "Expanded Big Delta Lots", located in Fort Bonifacio, Taguig City.

SO ORDERED.^[5]

Petitioner's subsequent motion for reconsideration was denied under Resolution dated January 30, 2014.

On the CIR's petition for review,^[6] the CTA En Banc affirmed under Decision dated December 16, 2014. It also denied petitioner's motion for reconsideration under Resolution dated April 15, 2015.

The CTA En Banc ruled that while respondent is, indeed, not among the exempt corporations listed under Section 27 (C) of the 1997 National Internal Revenue Code^[7] (NIRC) or RA 8424, as amended by RA 9337 and RA 10026, nevertheless, insofar as the sale of the "Expanded Big Delta Lots" is concerned, RA 7227, as amended by RA 7917 specifically exempts respondent from taxes. While the NIRC and its amending statutes were only promulgated after respondent was established, RA 7227, as amended is a special law. The NIRC, being a general law, is not deemed to have amended or superseded the special law in the absence of an express repeal thereof in the NIRC itself.

Additionally, Section 32(B) (7) (b) of the NIRC excludes from gross income and exempts from income tax, "the income derived from any public utility or from the exercise of any essential governmental functions accruing to the Government of the Philippines or to any political subdivisions." Section 2.57.5 of Revenue Regulations

No. 2-98 likewise provides that "withholding of CWT should not apply to income payments made to national Government and its instrumentalities."

The CTA further ruled that the sale proceeds of the subject properties are excluded from respondent's gross income pursuant Section 32 of the NIRC. Also, Section 2.57.5 of Revenue Regulation No. 2-98,^[8] the creditable withholding tax system does not apply to the National Government and its instrumentalities.

Finally, the CTA En Banc upheld the tax-exempt provision in respondent's Charter. It ordained:

xxx xxx xxx

xxx petitioner's reliance in the cases of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, *United International Pictures AB v. Commissioner of Internal Revenue* and *Asiaworld Properties Phil. Corp v. Commissioner of Internal Revenue*, is misplaced. It is noteworthy that the petitioner-taxpayers in these cases do not have a tax-exempt provision on its transaction that is akin to respondent's charter.^[9]

The Present Petition

Petitioner now urges this Court to nullify the CTA En Banc's Decision dated December 16, 2014 and Resolution dated April 15, 2015. Petitioner reiterates that respondent is not exempt from CWT. But even assuming it is, respondent's failure to comply with the requirements for tax refund negates its entitlement to such refund. Petitioner argues, in the main:

1. RA 7227, as amended by RA 7917 was *supplanted* by the NIRC specifically its Section 27(c). The NIRC got enacted in 1997 and took effect on January 1, 1998. In case of conflict, a later law prevails over an earlier law.
2. In claiming for tax refund, respondent did not comply with Section 10 of Revenue Regulation No. 6-85^[10] requiring that the income which was supposedly taxed must be shown to have been included in the gross income. It must also be proved that the tax was in fact withheld at source.

Petitioner cites ***Commissioner of Internal Revenue v. Far East Bank and Trust Company***^[11] where the claim for refund was denied for failure of therein respondent to present the Certificates of Creditable Tax Withheld at source.

Additionally, petitioner asserts that respondent's Annual Income Tax Return, copies of the Deeds of Absolute Sale, BIR payment Forms 0605, BIR Tax Payment Deposit Slips, and Certificates of Creditable Withholding Tax do not sufficiently establish that the income from the sale of the subject properties is part of the gross income.

3. Respondent failed to indicate in its income tax return whether it was availing of a tax credit or a tax refund. Since respondent *carried over the 2008 excess credit, then this "carry over" should also apply to the CWT that was withheld from the sale of the properties. When "carry over" is availed of, the option for refund is no longer available.*

In its Comment, respondent ripostes: Section 8 of RA 7227 as amended by RA 7917 provides that the proceeds from [respondent's] sale of government lands and other properties are exempt from all forms of taxes and fees. Further, Administrative Order (AO) 236 has declared that (a) the proceeds from the sale of government lands and other properties pursuant to RA 7227, as amended, are government funds and shall be remitted to the National Treasury and shall accrue to the General Fund of the Government and (b) the funds are automatically appropriated for the budget requirement of the several beneficiary-agencies identified under RA 7917.

Respondent further calls attention to paragraph (d), Section 8 of RA 7227, as amended by RA 7917.^[12] The provision commands that respondent's Global City properties shall be sold and the sale proceeds shall not be diminished. Respondent asserts that this provisions signifies that such sales are not subject to any taxes or fees.

Respondent avers that RA 7227, as amended, a special law, was not deemed superseded by the NIRC, a general law. On this score, respondent cites ***Lichauco & Company, Inc. v. Apostol***,^[13] ***Fajardo v. Villafuerte***,^[14] ***De Villa v. Court of Appeals***,^[15] and ***Commissioner of Internal Revenue v. Court of Tax Appeals***.^[16]

Too, respondent posits that the income from the sale of the Expanded Big Delta Lots was not included in its 2008 Income Tax Return precisely because the sale was excluded from its gross income per Section 8 of RA 7227, as amended. The sale proceeds are in the nature of a special appropriation because their disposition has already been determined by RA 7227, as amended. Thus, the use of the disposition proceeds for purposes other than that for which they were specifically intended violates not only RA 7227 but also the Constitution.

Core Issue

Is the BCDA exempt from Creditable Withholding Tax (CWT) on the sale of its Global City properties?

Ruling

The affirmative answer is found in Section 8 of RA 7227, as amended by RA 7917, otherwise known as the Bases Conversion and Development Act of 1992, viz.:

SECTION 8. Funding Scheme. - The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base, namely:

Camp

Area in has.
(more or less)

xxx xxx xxx

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the

provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds:**

(1) Thirty-five percent (35%) - To primarily finance the self-reliance and modernization program of the AFP, the transfer of the AFP military camps and the construction of new camps and the rehabilitation and expansion of the AFP's medical facilities, and the modernization of the government arsenal;

(2) Twenty-seven and a half percent (27.5%) - To finance the construction and upgrading of infrastructure such as highways, railways and other transport facilities to make Subic, Clark and other former bases accessible: Provided, That other public works, utilities and irrigation projects not specified herein shall be included: Provided, further, That the conversion into commercial uses of the former military baselands proper and their extensions shall be undertaken as much as practicable through the Build Operate-Transfer (BOT) scheme or financed by locator enterprises: Provided, finally, That this appropriation shall be retained by the Conversion Authority as part of its paid-up capital, pursuant to Section 6 of this Act;

(3) Twelve Percent (12%) - To finance the National Shelter Program: Provided, That fifty percent (50%) thereof, shall be used to finance mass social housing project for the underprivileged and homeless citizens of the country and the other fifty percent (50%) to concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas;

(4) Three percent (3%) - To finance the National Health Insurance Program;

(5) Five percent (5%) - To finance critical infrastructure projects not covered by the Build-Operate-Transfer (BOT) program in areas surrounding the former base lands;