

THIRD DIVISION

[G.R. No. 192398, September 29, 2014]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PILIPINAS SHELL PETROLEUM CORPORATION, RESPONDENT.**

DECISION

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari filed by petitioner Commissioner of Internal Revenue, who seeks to nullify and set aside the September 10, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 77117. The CA had affirmed the Decision^[2] of the Court of Tax Appeals ordering petitioner to refund, or in the alternative, issue a tax credit certificate in favor of Pilipinas Shell Petroleum Corporation (respondent) in the amount of P22,101,407.64 representing the latter's erroneously paid documentary stamp tax for the taxable year 2000. Petitioner likewise assails the CA Resolution^[3] denying petitioner's motion for reconsideration.

The antecedent facts:

Petitioner is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office located at Agham Road, Diliman, Quezon City.

Respondent Pilipinas Shell Petroleum Corporation (PSPC) is a corporation organized and existing under the laws of the Philippines and was incorporated to construct, operate and maintain petroleum refineries, works, plant machinery, equipment dock and harbor facilities and auxiliary works and other facilities of all kinds and used in or in connection with the manufacture of products of all kinds which are wholly or partly derived from crude oil.

On April 27, 1999, respondent entered into a Plan of Merger with its affiliate, Shell Philippine Petroleum Corporation (SPPC), a corporation organized and existing under the laws of the Philippines. In the Plan of Merger, it was provided that the entire assets and liabilities of SPPC will be transferred to, and absorbed by, respondent as the surviving entity. The Securities and Exchange Commission approved the merger on July 1, 1999.

On August 10, 1999, respondent paid to the BIR documentary stamp taxes amounting to P524,316.00 on the original issuance of shares of stock of respondent issued in exchange for the surrendered SPPC shares pursuant to Section 175 of the National Internal Revenue Code of 1997 (NIRC or Tax Code).

Confirming the tax-free nature of the merger between respondent and SPPC, the BIR, in a ruling^[4] dated October 4, 1999, ruled that pursuant to Section 40 (C)(2) and (6)(b) of the NIRC, no gain or loss shall be recognized, if, in pursuance to a plan

of merger or consolidation, a shareholder exchanges stock in a corporation which is a party to the merger or consolidation solely for the stock of another corporation which is also a party to the merger or consolidation.

The BIR ruled, among others, that no gain or loss shall be recognized by the stockholders of SPPC on the exchange of their shares of stock of SPPC solely for shares of stock of respondent pursuant to the Plan of Merger.

The BIR, however, stated in said Ruling that

3. The issuance by PSPC of its own shares of stock to the shareholders of SPPC in exchange for the surrendered certificates of stock of SPPC shall be subject to the documentary stamp tax (DST) at the rate of Two Pesos (P2.00) on each Two Hundred Pesos (P200.00), or fractional part thereof, based on the total par value of the PSPC shares of stock issued pursuant to Section 175 of the Tax Code of 1997.

x x x x

6. The exchange of land and improvements by SPPC to PSPC for the latter's shares of stock shall be subject to documentary stamp tax imposed under Section 196 of the Tax Code of 1997, based on the consideration contracted to be paid for such realty or its fair market value determined in accordance with Section 6(E) of the said Code, whichever is higher. x x x^[5]

On May 10, 2000, respondent paid to the BIR the amount of P22,101,407.64 representing documentary stamp tax on the transfer of real property from SPPC to respondent.

Believing that it erroneously paid documentary stamp tax on its absorption of real property owned by SPPC, respondent filed with petitioner on September 18, 2000, a formal claim for refund or tax credit of the documentary stamp tax in the amount of P22,101,407.64.

There being no action by petitioner, respondent filed on May 8, 2002, a petition^[6] for review with the Court of Tax Appeals (CTA) in order to suspend the running of the two-year prescriptive period.

Petitioner filed an Answer^[7] on June 11, 2002 praying that the petition for review be dismissed for lack of merit. Petitioner asserted that in tax-deferred exchanges, documentary stamp tax is imposed. Petitioner cited BIR Ruling No. 2-2001^[8] dated February 2, 2001 which states:

In view of all the foregoing, it is the opinion of this Office, as we hereby hold, that the tax-deferred exchange of properties of a corporation, which is a party to a merger or consolidation, solely for shares of stock in a corporation, which is also a party to the merger or consolidation, is subject to the documentary stamp tax under Section 176 if the properties

to be transferred are shares of stock or even certificates of obligations, and also to the documentary stamp tax under Sec[ti]on 196, if the properties to be transferred are real properties. Finally, it may be worth mentioning that the original issuance of shares of stock of the surviving corporation in favor of the stockholders of the absorbed corporation as a result of the merger, is subject to the documentary stamp tax under Sec[ti]on 175 of the Tax Code of 1997. (BIR Ruling No. S-40-220-2000, December 21, 2000).^[9]

In its Decision^[10] promulgated on April 30, 2003, the CTA granted respondent's prayer for tax refund or credit.

The CTA held that

Based on the foregoing, it is evident that the transfer of real property from the absorbed corporation to the surviving or consolidated corporation pursuant to a merger or consolidation **occurs by operation of law** inasmuch as the real property is deemed transferred **without further act or deed**. In the case at bar, the petitioner's theory is that DST on the transfer of real property does not apply to a "statutory merger" where real property of the absorbed corporation is deemed automatically vested in the surviving corporation by operation of law, i.e., without any further act of deed.

x x x x

To reiterate, since the transfer of real property of SPPC to petitioner was not effected by or dependent on any voluntary act or deed of the parties to the merger, DST, therefore, should not attach to the same.

x x x x

A perusal of the above-cited provision would reveal that the DST is imposed only on all conveyances, deeds, instruments, or writings where realty sold shall be conveyed to purchaser or purchasers. Clearly, in case of merger, as in the case at bar, only by straining the imagination can the transferee be said to have "bought" or "purchased" real property from the transferor. The absorption by petitioner of real property of SPPC as an inherent legal consequence of the merger is not a sale or other conveyance of real property for a consideration in money or money's worth.

As correctly pointed out by the petitioner, SPPC's real property was not conveyed to or vested in petitioner by means of any deed, instrument or writing, considering that real properties were automatically vested in petitioner without "further act or deed". There was a complete absence of any formal instrument or writing upon which DST may be imposed. Nor can the realty be said to have been "sold" or vested in a "purchaser or purchasers" within the ordinary meanings of those terms.

Moreover, under Revenue Memorandum Circular No. 44-86 dated December 4, 1986, which outlines the procedure in the determination and collection of stamp tax on instruments of sale or conveyance of real property, it is clear that the DST applies only if the instrument is a sale or other conveyance of real property for a consideration in money or money's worth.

Finally, the absorption by petitioner of real property of SPPC by operation of law pursuant to the merger is part and parcel of a single and continuing transaction. Accordingly, the same should not be subject to DST as if it constituted a separate and distinct transaction.

As earlier stated, DST is in the nature of an excise tax because it is really imposed on the privilege to enter into a transaction. Its imposition, therefore, should be only once. And in a statutory merger, there is only one transaction, i.e., the issuance by the surviving corporation of its own shares of stock to the stockholders of the absorbed corporation in exchange for the shares surrendered by the shareholders of the absorbed corporation. All other transactions which are an integral and inherent part of the merger, such as the absorption of real property, should no longer be subject to another round of DST. In other words, all the integral parts of the merger (e.g., surrender of shares in exchange for shares, transfer of assets, assumption of liabilities, etc.) should be treated as a single and continuing transaction subject only to one DST. The transfer of real property is not a transaction separate and distinct from the merger but an integral part or a mere continuation of the initial transaction which was previously consummated.

Applying the same in petitioner's case, the absorption by petitioner of real property of SPPC is not a transaction separate and distinct from the merger, wherein petitioner issued its own shares to SPPC shareholders in exchange for the latter's shares in SPPC, the absorbed entity, but a mere continuation of the initial transaction which was previously consummated, and for which the required DST was already paid.^[11]

On June 4, 2003, petitioner filed a petition for review with the CA.

In the herein assailed Decision dated September 10, 2009, the CA dismissed the petition and affirmed the Decision of the CTA. The appellate court held that the transfer of the properties of SPPC to respondent was not in exchange for the latter's shares of stock but is a legal consequence of the merger. The CA ruled that the actual transfer of SPPC's real properties to respondent was not effected by or dependent upon any voluntary deed, conveyance or assignment but occurred by operation of law. The CA held that since the basis of the BIR in imposing the documentary stamp tax is not applicable to a transfer of real property by operation of law, PSPC erroneously paid the documentary stamp tax and is therefore, entitled to a tax refund or tax credit.

Petitioner filed a motion for reconsideration which was denied by the CA in its

Resolution dated April 13, 2010.

Hence, petitioner filed the present petition on the sole ground that

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRANSFER OF REAL PROPERTIES OF SPPC TO RESPONDENT IN EXCHANGE FOR THE LATTER'S SHARES OF STOCK IS NOT SUBJECT TO THE DST IMPOSED UNDER SECTION 196 OF THE TAX CODE.^[12]

Petitioner points out that the merger between SPPC and respondent resulted in the following: (1) the issuance by respondent of its own shares of stock to the shareholders of SPPC in exchange for the surrendered certificates of stock of SPPC and was imposed a documentary stamp tax under Section 175 of the Tax Code in the amount of P524,316.00; and (2) the transfer of SPPC's real properties to respondent in exchange for the latter's shares of stock which was imposed a documentary stamp tax under Section 196 of the Tax Code in the amount of P22,101,407.64.

Respondent claims that the documentary stamp tax imposed on the second transaction had been erroneously paid and seeks to claim a refund or tax credit in the amount of P22,101,407.64. Both the CTA and the CA held that respondent is entitled to refund or tax credit.

Petitioner insists that the transfer of SPPC's real properties to respondent in exchange for the latter's shares of stock is subject to documentary stamp tax. Petitioner contends that Section 196 of the Tax Code covers all transfers of real property for a valuable consideration and does not only refer to sale of realty since it speaks of real property being "granted, assigned, transferred or otherwise conveyed."

Petitioner also claims that the subject transfer was not entirely by operation of law since the merger agreement between respondent and SPPC involves the voluntary act of the parties. Petitioner avers that it is wrong to say that no documentary stamp tax is imposable allegedly because the transfer to respondent of SPPC's real properties was not effected by means of any deed, instrument or writing. Petitioner contends that Section 196 of the Tax Code does not require that a particular document be executed for the transfer of real property in order to be subject to documentary stamp tax. Petitioner adds that it is enough that a conveyance of real property has been effected since documentary stamp tax is imposed not on the document alone but on the transaction. Petitioner avers that the merger between SPPC and respondent, while constituting a single transaction, gave rise to several tax incidents which, for tax purposes, should be treated individually and apart from the merger as a whole.

Lastly, petitioner argues that the enactment of Republic Act No. 9243^[13] (RA 9243) which specifically exempts the transfers of real property in merger or consolidation from documentary stamp tax only supports further the conclusion that prior to RA 9243, such transfers are subject to documentary stamp tax. Otherwise, there would have been no reason to specifically exempt such transfers from documentary stamp taxes.