

## FIRST DIVISION

[ G.R. No. 175707, November 19, 2014 ]

**FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER,  
VS. COMMISSIONER OF INTERNAL REVENUE AND REVENUE  
DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG AND  
PATEROS, BUREAU OF INTERNAL REVENUE, RESPONDENTS.**

[G.R. NO. 18003]

**FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER,  
VS. COMMISSIONER OF INTERNAL REVENUE AND REVENUE  
DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG AND  
PATEROS, BUREAU OF INTERNAL REVENUE, RESPONDENTS.**

[G.R. No. 181092]

**5 FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER,  
VS. COMMISSIONER OF INTERNAL REVENUE AND REVENUE  
DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG AND  
PATEROS, BUREAU OF INTERNAL REVENUE, RESPONDENTS.**

## D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

The Court has consolidated these three petitions as they involve the same parties, similar facts and common questions of law. This is not the first time that Fort Bonifacio Development Corporation (FBDC) has come to this Court about these issues against the very same respondents, and the Court *En Banc* has resolved them in two separate, recent cases<sup>[1]</sup> that are applicable here for reasons to be discussed below.

**G.R. No. 175707** is an appeal by *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure from (a) the **Decision**<sup>[2]</sup> dated April 22, 2003 of the Court of Appeals in **CA-G.R. SP No. 61516 dismissing** FBDC's Petition for Review with regard to the Decision of the Court of Tax Appeals (CTA) dated October 13, 2000 in **CTA Case No. 5885**, and from (b) the Court of Appeals **Resolution**<sup>[3]</sup> dated November 30, 2006 *denying* its Motion for Reconsideration.

**G.R. No. 180035** is likewise an appeal by *certiorari* pursuant to Rule 45 from (a) the Court of Appeals **Decision**<sup>[4]</sup> dated April 30, 2007 in **CA-G.R. SP No. 76540 denying** FBDC's Petition for Review with respect to the CTA **Resolution**<sup>[5]</sup> dated March 28, 2003 in **CTA Case No. 6021**, and from (b) the Court of Appeals **Resolution**<sup>[6]</sup> dated October 8, 2007 **denying** its Motion for Reconsideration.

The CTA Resolution reconsidered and reversed its earlier **Decision**<sup>[7]</sup> dated January 30, 2002 ordering respondents in CTA Case No. 6021 to refund or issue a tax credit certificate in favor of petitioner in the amount of P77,151,020.46, representing "VAT erroneously paid by or illegally collected from petitioner for the first quarter of 1998, and instead denied petitioner's Claim for Refund therefor."<sup>[8]</sup>

**G.R. No. 181092** is also an appeal by *certiorari* pursuant to Rule 45 from the Court of Appeals **Decision**<sup>[9]</sup> dated December 28, 2007 in **CA-G.R. SP No. 61158** dismissing FBDC's petition for review with respect to the CTA Decision<sup>[10]</sup> dated September 29, 2000 in **CTA Case No. 5694**. The aforesaid CTA Decision, which the Court of Appeals affirmed, **denied** petitioner's Claim for Refund in the amount of P269,340,469.45, representing "VAT erroneously paid by or illegally collected from petitioner for the fourth quarter of 1996."<sup>[11]</sup>

The facts are not in dispute.

Petitioner FBDC (petitioner) is a domestic corporation duly registered and existing under Philippine laws. Its issued and outstanding capital stock is owned in part by the Bases Conversion Development Authority, a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of "accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general."<sup>[12]</sup> The remaining fifty-five per cent (55%) is owned by Bonifacio Land Corporation, a consortium of private domestic corporations.<sup>[13]</sup>

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR). Respondent Revenue District Officer, Revenue District No. 44, Taguig and Pateros, BIR, is the chief of the aforesaid District Office.

The parties entered into a **Stipulation of Facts, Documents, and Issue**<sup>[14]</sup> before the CTA for each case. It was established before the CTA that petitioner is engaged in the development and sale of real property. It is the owner of, and is developing and selling, parcels of land within a "newtown" development area known as the Fort Bonifacio Global City (the Global City), located within the former military camp known as Fort Bonifacio, Taguig, Metro Manila.<sup>[15]</sup> The National Government, by virtue of Republic Act No. 7227<sup>[16]</sup> and Executive Order No. 40,<sup>[17]</sup> was the one that conveyed to petitioner these parcels of land on February 8, 1995.

In May 1996, petitioner commenced developing the Global City, and since October 1996, had been selling lots to interested buyers.<sup>[18]</sup> At the time of acquisition, value-added tax (VAT) was not yet imposed on the sale of real properties.

**Republic Act No. 7716** (the Expanded Value-Added Tax [E-VAT] Law),<sup>[19]</sup> which took effect on January 1, 1996, restructured the VAT system by further amending pertinent provisions of the National Internal Revenue Code (NIRC). **Section 100 of the old NIRC** was so amended by including "real properties" in the definition of the term "goods or properties," thereby subjecting the sale of "real properties" to VAT. The provision, as amended, reads:

SEC. 100. *Value-Added Tax on Sale of Goods or Properties*. — (a) *Rate and Base of Tax*. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

- (1) The term “*goods or properties*” shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
- (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business[.]

While prior to Republic Act No. 7716, real estate transactions were not subject to VAT, they became subject to VAT upon the effectivity of said law. Thus, the **sale** of the parcels of land by petitioner became subject to a 10% VAT, and this was later increased to 12%, pursuant to Republic Act No. 9337.<sup>[20]</sup> Petitioner afterwards became a VAT-registered taxpayer.

On September 19, 1996, in accordance with Revenue Regulations No. 7-95 (Consolidated VAT Regulations), petitioner submitted to respondent BIR, Revenue District No. 44, Taguig and Pateros, an inventory list of its properties as of February 29, 1996. The total book value of petitioner’s land inventory amounted to P71,227,503,200.00.<sup>[21]</sup>

On the basis of Section 105 of the NIRC,<sup>[22]</sup> petitioner claims a **transitional or presumptive input tax credit** of 8% of **P71,227,503,200.00**, the total value of the real properties listed in its inventory, or a total input tax credit of P5,698,200,256.00.<sup>[23]</sup> After the value of the real properties was reduced due to a reconveyance by petitioner to BCDA of a parcel of land, petitioner claims that it is entitled to **input tax credit** in the *reduced amount* of **P4,250,475,000.48**.<sup>[24]</sup>

What petitioner seeks to be refunded are the actual VAT payments made by it in cash, which it claims were either erroneously paid by or illegally collected from it.<sup>[25]</sup> Each Claim for Refund is based on petitioner’s position that it is entitled to a transitional input tax credit under Section 105 of the old NIRC, which more than offsets the aforesaid VAT payments.

#### **G.R. No. 175707**

Petitioner’s VAT returns filed with the BIR show that for the second quarter of 1997, petitioner received the total amount of P5,014,755,287.40 from its sales and lease of lots, on which the output VAT payable was P501,475,528.74.<sup>[26]</sup> The VAT returns likewise show that petitioner made cash payments totaling P486,355,846.78 and utilized its input tax credit of P15,119,681.96 on purchases of goods and services.<sup>[27]</sup>

On February 11, 1999, petitioner filed with the BIR a **claim for refund** of the amount of P486,355,846.78 which it paid in cash as VAT for the second quarter of 1997.<sup>[28]</sup>

On May 21, 1999, petitioner filed with the CTA a petition for review<sup>[29]</sup> by way of appeal, docketed as CTA Case No. 5885, from the alleged inaction by respondents of petitioner's claim for refund with the BIR. On October 1, 1999, the parties submitted to the CTA a Stipulation of Facts, Documents and Issue.<sup>[30]</sup> On October 13, 2000, the CTA issued its Decision<sup>[31]</sup> in CTA Case No. 5885 denying petitioner's claim for refund for lack of merit.

On November 23, 2000, petitioner filed with the Court of Appeals a Petition for Review of the aforesaid CTA Decision, which was docketed as CA-G.R SP No. 61516. On April 22, 2003, the CA issued its Decision<sup>[32]</sup> dismissing the Petition for Review. On November 30, 2006, the Court of Appeals issued its Resolution<sup>[33]</sup> denying petitioner's Motion for Reconsideration.

On December 21, 2006, this Petition for Review was filed.

Petitioner submitted its Memorandum<sup>[34]</sup> on November 7, 2008 while respondents filed their "Comment"<sup>[35]</sup> on May 4, 2009.<sup>[36]</sup>

On December 2, 2009, petitioner submitted a Supplement<sup>[37]</sup> to its Memorandum dated November 6, 2008, stating that the said case is intimately related to the cases of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 158885, and *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 170680, which were already decided by this Court, and which involve the same parties and similar facts and issues.<sup>[38]</sup>

**Except for the amounts of tax refund being claimed and the periods covered for each claim, the facts in this case and in the other two consolidated cases below are the same. The parties entered into similar Stipulations in the other two cases consolidated here.**<sup>[39]</sup>

## **G.R. No. 180035**

We quote relevant portions of the parties' Stipulation of Facts, Documents and Issue in CTA Case No. 6021<sup>[40]</sup> below:

**1.11. Per VAT returns filed by petitioner with the BIR, for the second quarter of 1998, petitioner derived the total amount of P903,427,264.20 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue was P90,342,726.42.**

**1.12. The VAT returns filed by petitioner likewise show that to pay said amount of P90,342,726.42 due to the BIR, petitioner made cash payments totalling P77,151,020.46 and utilized its regular input tax credit of P39,878,959.37 on purchases of goods and services.**

**1.13. On November 22, 1999, petitioner filed with the BIR a claim**

**for refund of the amount of P77,151,020.46 which it paid as value-added tax for the first quarter of 1998.**

1.14. Earlier, on October 8, 1998 and November 17, 1998, February 11, 1999, May 11, 1999, and September 10, 1999, based on similar grounds, petitioner filed with the BIR claims for refund of the amounts of P269,340,469.45, P359,652,009.47, P486,355,846.78, P347,741,695.74, and P15,036,891.26, representing value-added taxes paid by it on proceeds derived from its sales and lease of lots for the quarters ended December 31, 1996, March 31, 1997, June 30, 1997, September 30, 1997, and December 31, 1997, respectively. After deducting these amounts of P269,340,469.45, P359,652,009.47, P486,355,846.78, P347,741,695.74, and P15,036,891.26 from the total amount of P5,698,200,256.00 claimed by petitioner as input tax credit, the remaining input tax credit more than sufficiently covers the amount of P77,151,020.46 subject of petitioner's claim for refund of November 22, 1999.

1.15. As of the date of the Petition, no action had been taken by respondents on petitioner's claim for refund of November 22, 1999.<sup>[41]</sup> (Emphases ours.)

The petition in G.R. No. 180035 "seeks to correct the unauthorized limitation of the term 'real properties' to 'improvements thereon' by Revenue Regulations 7-95 and the error of the Court of Tax Appeals and Court of Appeals in sustaining the aforesaid Regulations."<sup>[42]</sup> This theory of petitioner is the same for all three cases now before us.

On March 14, 2013, petitioner filed a Motion for Consolidation<sup>[43]</sup> of G.R. No. 180035 with G.R. No. 175707.

Petitioner submitted its Memorandum<sup>[44]</sup> on September 15, 2009 while respondents filed theirs on September 22, 2009.<sup>[45]</sup>

## **G.R. No. 181092**

The facts summarized below are found in the parties' Stipulation of Facts, Documents and Issue in CTA Case No. 5694<sup>[46]</sup>:

**1.09.** Per VAT returns filed by petitioner with the BIR, for the **fourth quarter of 1996**, petitioner derived the total amount of **P3,498,888,713.60** from its sales and lease of lots, on which the **output VAT payable** to the Bureau of Internal Revenue was **P318,080,792.14**.

1.10. The VAT returns filed by petitioner likewise show that to pay said amount of P318,080,792.14 due to the BIR, petitioner made cash payments totalling P269,340,469.45 and utilized (a) part of the total transitional/presumptive input tax credit of P5,698,200,256.00 being