

## **THIRD DIVISION**

**[ G.R. Nos. 164155 & 175543, February 25, 2013 ]**

**FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER,  
VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### **D E C I S I O N**

**ABAD, J.:**

These cases are concerned with the imposition of an assessment for unpaid documentary stamp tax (DST) allegedly due on the Government's sale of the military land in Fort Bonifacio to Fort Bonifacio Development Corporation (FBDC), then a wholly-owned government corporation.

#### **The Facts and the Case**

In 1992 Congress enacted Republic Act (R.A.) 7227 creating the Bases Conversion Development Authority (BCDA) for the purpose of raising funds through the sale to private investors of military camps located in bustling Metro Manila. To do this, on February 3, 1995 the BCDA established the FBDC for the purpose of enabling it to develop a 440-hectare area in Fort Bonifacio, Taguig City, for mixed residential, commercial, business, institutional, recreational, tourism, and other purposes. At the time of its incorporation, FBDC was a wholly-owned subsidiary of BCDA.

As part of the scheme that would enable BCDA to raise funds through FBDC,<sup>[1]</sup> on February 7, 1995 the Republic of the Philippines transferred by land grant to FBDC, through Special Patent 3596, a 214-hectare land in Fort Bonifacio. FBDC in turn executed a Promissory Note for P71.2 billion plus in favor of the Republic. The Republic for its part assigned the promissory note to BCDA which assigned it back to FBDC as full and complete payment of BCDA's subscription to FBDC's authorized capital stock.

Further, on February 8, 1995 the Republic executed a Deed of Absolute Sale with Quitclaim in favor of FBDC covering the same 214-hectare land also for P71.2 billion. Based on this deed, on February 19, 1995 the Register of Deeds issued Original Certificate of Title SP-001 in favor of FBDC, replacing Special Patent 3596. On February 24, 1995, within the same month of the issuance of the Special Patent and the execution of the deed of absolute sale, Congress enacted R.A. 7917, declaring exempt from all forms of taxes the proceeds of the Government sale of the Fort Bonifacio land. Subsequently, fulfilling its task of raising funds for specified government projects, BCDA sold at public bidding 55% of its shares in FBDC to private investors, retaining ownership of the remaining 45%.

More than three years later or on September 15, 1998 respondent Commissioner of Internal Revenue issued a Letter of Authority, providing for the examination of FBDC's books and other accounting records covering all its internal revenue liabilities

for the 1995 taxable year, the year it came into being. On December 10, 1999 the Commissioner issued a Final Assessment Notice to FBDC for deficiency documentary stamp tax of P1,068,412,560.00 based on the Republic's 1995 sale to it of the Fort Bonifacio land.

FBDC protested the assessment. On January 6, 2000 it wrote respondent Commissioner a letter, invoking R.A. 7917, which exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes. When respondent Commissioner failed to act on FBDC's request for tax exemption despite the lapse of the 180-day period,<sup>[2]</sup> FBDC filed a petition for review<sup>[3]</sup> before the Court of Tax Appeals (CTA) contesting the deficiency assessment.

On March 5, 2003 the CTA rendered a decision denying FBDC's petition and affirming the Commissioner's DST assessment. The CTA treated the Republic's issuance of the Special Patent separate and distinct from the Deed of Absolute Sale that it executed. The former, said the CTA, was tax exempt but the latter was not. Still, the Commissioner filed a motion for partial reconsideration of the decision on the ground that the CTA failed to impose a 25% surcharge and a 20% delinquency interest on top of the unpaid DST.

For its part, FBDC filed a petition for review<sup>[4]</sup> of the CTA decision before the Court of Appeals (CA) alleging that the CTA erred in affirming the imposition of the assessment. On August 14, 2003, while that petition for review was pending, the CTA issued a resolution modifying its March 5, 2003 decision and imposed on FBDC a 20% delinquency interest on the P1,068,412,560.00 DST, computed from January 26, 2000 until full payment. From this resolution, FBDC filed a separate petition for review<sup>[5]</sup> before the CA questioning the imposition of the 20% delinquency interest.

The CA first affirmed the March 5, 2003 CTA decision. Subsequently, it also affirmed the August 14, 2003 CTA resolution. The CA held that FBDC was not exempt from the payment of DST in connection with the execution of the deed of sale covering the Fort Bonifacio land. The CA, in the subsequent decision also held that the CTA properly imposed the 20% delinquency interest. The CA decisions prompted FBDC to file these consolidated petitions.

During the pendency of these petitions or on December 17, 2004 the FBDC filed a manifestation and motion informing the Court that the disputed assessment had already been paid through a Special Allotment Release Order issued by the Department of Budget and Management (DBM) to BCDA for P1,189,121,947.00. The amount "covers the payment of documentary stamp taxes, transfer fees, 5% withholding tax and registration fees relative to the sale of [a] portion of Fort Bonifacio," chargeable against the Military Camps Sale Proceeds Fund.

Commenting on the manifestation, the Commissioner claimed that the payment was illegal since it breached the scope of the tax exemption provided in Section 8 of R.A. 7917 and since BCDA paid the tax for the benefit of FBDC, a private corporation.

### **The Issues Presented**

These consolidated cases essentially present two issues:

1. Whether or not the CA erred in ruling that FBDC was liable for the payment of the DST and a 20% delinquency interest on the Deed of Absolute Sale of the 214-hectare Fort Bonifacio land that the Republic executed in FBDC's favor; and
2. Whether or not the case is already moot and academic by the fact of payment of the DST assessment by BCDA.

### **The Rulings of the Court**

The CTA ruled that, while the Special Patent that the Republic issued to FBDC in consideration of P71.2 billion plus was exempt from the payment of DST, the Deed of Absolute Sale that the Republic subsequently executed in FBDC's favor covering the same land is not.

Section 196 of the NIRC, as amended by Republic Act 7660, provides:

*Sec. 196. Stamp tax on deeds of sale and conveyance 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 lands, tenements 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 following rates: x x x. (Emphasis supplied)*

But the two documents—the Special Patent and the Deed of Absolute Sale—covered the Republic's conveyance to FBDC of the same Fort Bonifacio land for the same price that the FBDC paid but once. It is one transaction, twice documented.

On February 7, 1995 the Republic through the President, issued Special Patent 3596 to FBDC pursuant to an Act of Congress or R.A. 7227. That legislative act removed the public character of the Fort Bonifacio land and allowed the President to cede ownership of the same to FBDC, then a wholly-owned government corporation under the BCDA, for the price of P71.2 billion plus, covered by a negotiable promissory note. The Republic could not just spend or use the money it received from the sale without authority from Congress. In this case, the basis for appropriation is found also in R.A. 7227 which earmarked the proceeds of the sale of the Fort Bonifacio land for use in capitalizing the BCDA. Section 6 of R.A. 7227 thus provides:

*Section 6. Capitalization. – The Conversion Authority [BCDA] shall have an authorized capital of One hundred billion pesos (P100,000,000,000) **which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act** or by transferring to the Conversion Authority properties valued in such amount. (Emphasis supplied)*

At the time the sale subject of this case was entered into, FBDC was a wholly-owned subsidiary of the BCDA pursuant to Section 16<sup>[6]</sup> of R.A. 7227. Notably, the Republic