



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**FORT BONIFACIO DEVELOPMENT  
CORPORATION,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL  
REVENUE,**

Respondent.

**G.R. Nos. 164155 & 175543**

Present:

VELASCO, JR., *J.*, *Chairperson*,  
DEL CASTILLO,\*  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

Promulgated:

February 25, 2013

X

*Officer*

X

***DECISION***

**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.

\* Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated November 26, 2012.

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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 ₱71.2 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 ₱71.2 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 ₱1,068,412,560.00 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

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<sup>1</sup> REPUBLIC ACT 7227, Section 8.

<sup>2</sup> As provided for in Section 228 of the National Internal Revenue Code.

<sup>3</sup> Docketed as CTA Case 6149.

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 ₱1,068,412,560.00 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 ₱1,189,121,947.00. 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

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<sup>4</sup> Docketed as CA-G.R. SP 76017.

<sup>5</sup> Docketed as CA-G.R. SP 79010.

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 ₱71.2 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 ₱71.2 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 (₱100,000,000,000) **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 sold the Fort Bonifacio land to FBDC and the latter paid for it with a promissory note. When the Republic in turn assigned that promissory note to BCDA, not only did it comply with its obligation under the above provision to capitalize BCDA from the proceeds of the sales of its land assets but it also enabled the latter to fully and completely pay for its subscription to FBDC's authorized capital stock. Consequently, to tax the proceeds of that sale would be to tax an appropriation made by law, a power that the Commissioner of Internal Revenue does not have.

The Republic's subsequent execution of a Deed of Absolute Sale cannot be regarded as a separate transaction subject to the payment of DST. The Republic's sale of the land to FBDC under the Special Patent was a complete and valid sale that conveyed ownership of the land to the buyer.<sup>7</sup> Notably, FBDC paid for the land with a negotiable promissory note. Indeed, paragraph 4 of the Deed of Absolute Sale acknowledges the absolute and irrevocable nature of the sale made under the special patent. Thus, the pertinent portion of paragraph 4 states:

4. To implement the transfer and registration of the Subject Property in the name of the Buyer [FBDC], the Seller [Republic] **has issued** or shall hereafter cause to be issued, **a Special Patent which will absolutely and irrevocably grant and convey the legal and beneficial title to the Subject Property to and in favor of the Buyer.** x x x.  
(Emphasis supplied)

Clearly, in acknowledging that the Republic "has issued x x x a Special Patent which will absolutely and irrevocably grant and convey" the legal title over the land to FBDC, the Republic in effect admitted that the Deed of Absolute Sale was only a formality, not a vehicle for conveying ownership, that it thought essential for the issuance of an Original Certificate of Title (OCT) covering the land. The issuance of the OCT lent itself to unrestricted commercial use that helped attain the law's objective of raising through the BCDA and its subsidiaries the funds needed for specified government projects.

DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the

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<sup>6</sup> Section 16. *Subsidiaries.* – The Conversion Authority shall have the power to form, establish, organize and maintain a subsidiary corporation or corporations. x x x

<sup>7</sup> Under Section 103 of Presidential Decree 1529 (Property Registration Decree), the patent from the Government issued to the grantee shall operate as a contract between them and as evidence of authority for the Register of Deeds to cause registration of the land.

creation, modification or termination of contractual relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock.<sup>8</sup> The sale of Fort Bonifacio land was not a privilege but an obligation imposed by law which was to sell lands in order to fulfill a public purpose. To charge DST on a transaction which was basically a compliance with a legislative mandate would go against its very nature as an excise tax.

Besides, it is clear from Section 8 of R.A. 7227 that the capital of BCDA, which shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of DST. Section 8 states:

**SEC. 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 (Nichols) Air Base, namely: x x x**

x x x x

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 used for the following purposes with their corresponding percent shares of proceeds: x x x (Emphasis supplied)**

Had FBDC paid the amount on February 8, 1995 when it was supposed to be due, such payment would have resulted in diminishing the proceeds of the sale that the Republic received and turned over to BCDA to capitalize it. The above-quoted provision of Section 8 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including DST.

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<sup>8</sup> *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

As it developed, while this case was pending before this Court, the BCDA paid the DST assessment for the benefit of FBDC through a government release of funds from the national treasury, chargeable against the Military Camps Sale Proceeds Fund. Clearly, by allowing such payment, the government acknowledges that it made the private investors who submitted bids to acquire 55% of the capital stock of FBDC believe that the proceeds of the government's sale of the land that capitalized FBDC was exempt from all forms of taxes as the law provides. Indeed, the government warranted under the Deed of Absolute Sale it executed in FBDC's favor that "[T]here are no x x x taxes due and owing on or in respect of the subject property or the transfer thereof in favor of the buyer."

With the Court's above ruling, it would be useless to resolve the further issue of whether or not the case has been rendered moot and academic by BCDA's payment of the DST assessment.

**WHEREFORE**, the Court **GRANTS** the consolidated petitions and **REVERSES** and **SETS ASIDE** the Decisions of the Court of Appeals in CA-G.R. SP 76017 and CA-G.R. SP 79010 dated June 11, 2004 and November 27, 2006, respectively, and **DECLARES VOID** Assessment ST-DST-95-0131-99 of respondent Commissioner of Internal Revenue.


**SO ORDERED.**



**ROBERTO A. ABAD**

Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**

Associate Justice

Chairperson



**MARIANO C. DEL CASTILLO**

Associate Justice



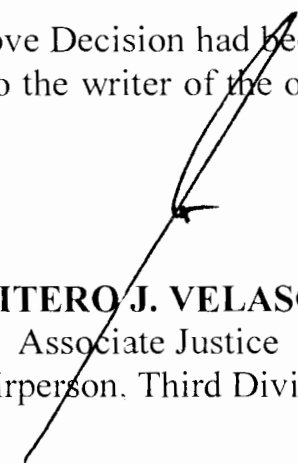
**JOSE CATRAL MENDOZA**

Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

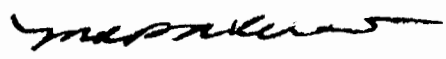
***ATTESTATION***

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice