



Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1123
(CTA Case No. 8140)

Present:

-versus-

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

BASES CONVERSION AND DEVELOPMENT
AUTHORITY,

Respondent.

Promulgated:

DEC 16 2014

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DECISION

CASTAÑEDA, JR., J:

This is a Petition for Review by the Commissioner of Internal Revenue seeking to reverse and set aside the Decision¹ and the Resolution² dated September 13, 2013 and January 30, 2014, respectively, of the Court of Tax Appeals-First Division (Court in Division) in the case entitled *Bases Conversion and Development Authority –versus- Commissioner of Internal Revenue*, and docketed as CTA Case No. 8140.

This appeal stemmed from the ruling of the Court in Division ordering petitioner to refund the amount of ₱101,637,466.40 representing creditable *je*

¹ Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla. *Rollo*, pp. 51-76.

² Id. at 77-79.

withholding tax paid on July 31, 2008 in favor of respondent in connection with the sale/disposition of the 12,036 square meter property located at Fort Bonifacio, Taguig City and is known as the "Expanded Big Delta Lots."

The Facts

The factual backdrop as found by the Court in Division and as borne from the records is as follows:

On May 23, 2008, [respondent] entered into four separate Contracts to Sell, involving the 12,036 sq. m. "Expanded Big Delta Lots" (*subject property*) located in Bonifacio Global City, Taguig City, with 18-14 Property Holdings, Incorporated, 14-8B Property Holdings Incorporated, The Net Group Project Management Corporation, and The Net Group Property Management Corporation (*buyer-companies*), all members of the Unincorporated Joint Venture (identified as the "Net Group"), for the total purchase price of P2,032,749,327.96, detailed as follows:

Exhibit	Buyer	Area	TCT No.	Purchase Price
A	18-14 Property Holdings, Inc.	3,600 sq. m.	TCT No. 238-P and 239-P	P608,000,796.00
B	14-8B Property Holdings, Inc.	3,150 sq. m.	TC No. 240-P	532,000,696.50
C	The Net Group Project Management Corp.	2,861 sq. m.	TC No. 241-P	483,191,743.71
D	The Net Group Property Management Corp.	2,425 sq. m.	TC No. 242-P	409,556,091.75
TOTAL				P2,032,749,327.96

In a letter dated May 26, 2008, which [respondent] received on May 27, 2008, the Net Group informed [respondent] that it would defer the remittance of the amount of P101,637,466.40 to the BIR, representing the amount of CWT, which it withheld in relation to the above-mentioned sale transactions until [respondent] could present on or before June 9, 2008, a written confirmation from the BIR that no CWT was due for the said sale.

[Respondent] wrote a letter to the CIR, which the BIR received on May 28, 2008, requesting a confirmation that it is exempted from all taxes and fees, including CWT and value added tax (VAT) on the sale/disposition of the 12,036 sq. m. *je*

“Expanded Big Delta Lots” in Fort Bonifacio. [Respondent], however, received no reply from the CIR.

On July 23, 2008, [respondent] and the buyer-companies, as withholding agents, remitted to BIR RDO No. 44 the amount of P101,637,466.40 representing five percent (5%) CWT on the P2,032,749,327.96 total purchase price of the subject properties to wit:

Withholding agent	Payment Form (BIR Form No. 0605) (Exhibit)	BIR Tax Payment Deposit Slip (Exhibit)	CWT
The NetGroup Property Management Corp.	J	K	₱ 20,477,804.59
18-14 Property Holdings, Inc.	M	N	15,200,019.90
18-14 Property Holdings, Inc.	P	Q	15,200,019.90
14-8B Property Holdings, Inc.	S	T	26,600,034.83
The Net Group Project Management Corp.	V	W	24,159,587.19
Total			<u>P101,637,466.41</u>

The buyer-companies accordingly issued Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) in the name of [respondent], summarized as follows:

Withholding Agent	Certificate of Creditable Tax Withheld at Source (Exhibit)	CWT
The NetGroup Property Management Corp.	L	P20,477,804.59
18-14 Property Holdings, Inc.	O	15,200,019.90
18-14 Property Holdings, Inc.	R	15,200,019.90
14-8B Property Holdings, Inc.	U	26,600,034.83
The Net Group Project Management Corp.	X	24,159,587.19
TOTAL		P101,637,466.41

On March 9, 2009, [respondent] filed a letter dated February 28, 2009 (*with attachments*) with [petitioner] claiming for a refund of the amount of P101,637,466.40, allegedly representing erroneously or illegally collected CWT relative to the sale of the above-mentioned property.

[Petitioner] failed to act on [respondent's] claim for refund, prompting [respondent] to file the instant Petition for Review on July 29, 2010. *jr*

In the Resolution dated October 18, 2010, [the Court in Division] admitted [petitioner's] belatedly filed Answer. In her Answer, [petitioner] interposed the following special and affirmative defenses:

"5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

6. [Repondent's] alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

7. [Respondent] failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

8. [Respondent] must show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, on the prescriptive period for claiming tax refund/credit.

9. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provisions of law.

10. [Respondent] failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of One Hundred Million Six Hundred Thirty Seven Thousand Four Hundred Sixty Six Pesos and 40/100 (P101,637,466.40) representing alleged unutilized creditable withholding tax for taxable year 2008.

11. [Respondent], in its Petition for Review, alleged that it is a government instrumentality that is vested with corporate powers duly organized and existing under and by virtue of Republic Act No. 7227 otherwise known as the Bases Conversion and Development Act of 1992.

12. By virtue of which, it likewise alleged that Section 8 of aforesaid RA [7]227 as *je*

amended by RA 7917 intended the proceeds of its sale to be exempt from the payment of all forms of taxes. It alleged that Section 8 as amended by RA 7917 avers:

The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.

It bears stressing that RA 7917 was approved and enacted into law on February 24, 1995.

Contrary to the aforesaid provision of law, [petitioner] humbly manifests that with the advent of the NIRC of 1997, as amended, which took effect on January 1, 1998, [respondent], being a government entity, is liable to pay income tax pursuant to the provision of Section 27(C) thereof which explicitly provides:

'C) Government-owned or Controlled-Corporations, Agencies or Instrumentalities.
– The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry or activity.' (Emphasis and underscoring supplied)

On the basis of the foregoing provision of law, it is clear as water that [respondent], being a governmental instrumentality owned and controlled by the Government is liable to pay *g*

income tax. It is quite important to emphasize that this is notwithstanding any provision of existing special law like RA 7227. Hence, the NIRC of 1997 which was implemented in 1998 shall be supreme and remain in force over RA 7917 which took effect in 1995. As can be gleaned, the only government-run entities that are exempt from the payment of income tax are limited to GSIS, SSS, PHIC, PCSO and PAGCOR. Petitioner, being not one of those excluded from the coverage, is therefore, not exempt from the payment of income taxes.

It is basic precept in statutory construction that when the law is clear, the function of the courts is simple (sic) to apply the law. Time and again, where the law speaks in clear and categorical language, there is no room for interpretation, vacillation, or equivocation; there is room only for application.

In relation thereto, the NIRC of 1997, as amended by Republic Act No. 9337 on July 1, 2005 provides:

'Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

Sec. 27. Rates of Income Tax on Domestic Corporations. –

xxx

(C) *Government-owned or –Controlled Corporations, Agencies or Instrumentalities.*

– **The provisions of existing special or general laws to the contrary notwithstanding**, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), **shall pay such rate of tax upon their taxable**

je

income as are imposed by this Section upon corporations or associations engaged in a similar business, industry or activity.
xxx

Sec. 24. *Repealing Clause.* – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

xxx


(C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

xxx

Sec. 26. *Effectivity Clause.* – This Act shall take effect on July 1, 2005. Xxx (Emphasis and underscoring supplied)

Again, by express provision of RA 9337, it is a glaring reality that government instrumentalities are still liable to pay income tax. The only remaining four (4) institutions that are exempt to pay income tax are the GSIS, SSS, PHIC and PCSO. Ergo, [respondent], being a government instrumentality and not excluded from the exempt institutions, is still liable to pay the income taxes.

In the case entitled, '*Florencio Eugenio vs. Secretary Franklin M. Drilon et al.*,' the Supreme Court held:

'xxx The intent of the law, as culled from the situation, circumstances and conditions it sought to remedy, must be enforced. On 

this point, a leading authority on statutory construction stressed:

The intent of a statute is law . The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act In construing statutes, the proper course is to start out and follow the trite intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.' (Emphasis and underscoring supplied.)

Corollary thereto, in '*Republic of the Philippines et al. vs. Carlito Lacap*,' the Supreme Court eloquently propounded:


'The 'plain meaning rule' or *verbal legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. The rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on a valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, of from the words of a statute there should be no departure.' *gr*

In the case of '*Martin Centeno vs. Hon. Victoria Villalon-Pornillos et al.*', the Supreme Court had the occasion to say:

'xxx Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim '*expressio unius est exclusion alterius.*' Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise **that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.** xxx' (Emphasis and underscoring supplied)

Suffice it to say that the taxes withhold (sic) from [respondent] out of the income it derived from the sale of real properties to the unincorporated joint venture identified as the 'NetGroup' is a form of Income tax that will be credited in its favor and declared under CWT (BIR Form No. 2307). The CWT becomes part and parcel of the Quarterly and Annual Income Tax Return of [respondent] to be used for the purpose of offsetting the income tax liabilities of [respondent] for a given taxable year. The CWT paid is deducted from the income tax liabilities of [respondent] shown in its Annual Income Tax Return to arrive at the remaining income tax still payable.

13. Having established that [respondent] is liable to pay CWT while its buyers, the 'NetGroup', are obliged to remit the withholding taxes due, the following pertinent provisions of law are applicable relative to the manner of computing, payment and remittance of the CWT.

RR 6-2001 dated July 31, 2001 provides: 

'SECTION 3. Revised Rules of Creditable Withholding Tax – Section 2.57.2 of Revenue Regulations 2-98, as amended, is hereby further amended to read as follows:

xxx

J. Gross Selling Price of (*sic*) total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset – A creditable withholding tax based on the Gross Selling Price/total amount of consideration or the Fair Market Value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:

xxx

B. Upon the following values of real property, where the seller/transferor is habitually engaged in real estate business;

xxx

*With a selling price of more than
Two Million Pesos* **5%**

xxx

If the buyer is an individual not engaged in trade or business, the following rules shall apply:

- (i) If the sale is a sale of property on the **installment** plan, that is **payments in the year do not exceed 25% of the selling price**, no withholding tax is required to be made on the periodic installment payments. In such a case, the applicable tax rate *ge*

of tax (*sic*) based on the gross selling price or fair market value of the property, whichever is higher shall be withheld on the last installment or installments to be paid to the seller until the tax is fully paid;

- (ii) If on the other hand, the sale is on a 'cash basis' or is a 'deferred payment sale' on installment plan' (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

- (i) If the sale is a sale of property on the installment plan (that is, payments in the year of sale do not exceed 25% of the selling price), the tax shall be deducted and withheld by the buyer on every installment.
- (ii) If, on the other hand, the sale is not on a 'cash basis' or is a 'deferred-payment sale not on the installment plan' (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.'

SECTION 4. Time for Filing of Withholding Tax and VAT Returns and the Payment of Taxes Due Thereon. –

xxx *jr*

- (1) Section 2.58 (A) (2) and 2.81 of RR No. 2-98, as amended are hereby further amended to read as follows:


Section 2.58 – RETURNS AND PAYMENTS OF TAXES WITHHELD AT SOURCE

- (A) Monthly return and payments of taxes

xxx

- (2) WHEN TO FILE –

- (a) For both large and non-large taxpayers, the withholding tax returns, whether creditable or final (including final withhold [sic] taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month**, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.
- (b) With respect, however, to taxpayers, whether large or non-large, who availed of the **Electronic Filing and Payment System (EFPS)**, the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be **five (5) days later than the deadlines** set above'. (Emphasis and underscoring supplied)


Corollary thereto, Revenue Regulations No. 12-2001 dated September 7, 2001 provides: 

'Section 4. Time of Withholding. – Section 2.57.4 of RR 2-98 is hereby amended, to read as follows:

Section 2.57.4. Time of Withholding – The obligation of the payor **to deduct and withhold the tax** under Section 2.57 of these Regulations arises **at the time an income payment is paid** or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.' (Emphasis and underscoring supplied)

[Respondent] allegedly sold properties to an unincorporated joint venture called the 'NetGroup' on May 23, 2008 for the total purchase price of Two Billion Thirty Two Million Seven Hundred Forty Nine Thousand Three Hundred Twenty Seven Pesos and 96/100 (P2,032,749,327.96) broken down as follows:

Date of Contract to Sell	Name of Buyer	Purchase Price	Downpayment on May 23, 2008	Rate of Downpayment	Balance 31-Jul-08	5% CWT on Gross Selling Price	Date of Remittance
23-May-08	18-14 Property Holdings Inc.	608,000,796.00	179,461,615.15	30%	428,539,180.85	30,400,039.80	31-Jul-08
23-May-08	14-8B Property Holdings, Inc.	532,000,696.50	157,028,913.26	30%	374,971,783.24	26,600,034.83	31-Jul-08
23-May-08	NetGroup Project Mngt Corp.	483,191,743.71	142,622,133.60	30%	340,569,610.11	24,159,587.19	31-Jul-08
23-May-08	NetGroup Project Mngt Corp.	409,556,091.75	120,887,337.90	30%	288,668,753.76	20,477,804.59	31-Jul-08
Total		2,032,749,327.96	600,000,000.00		1,432,749,327.96	101,637,466.40	

Based on the foregoing provision of law, the 'NetGroup', being a withholding agent, is under obligation to deduct and withhold the tax which arises at the time the income payments are made on May 23, 2008. Although the terms of the contract provide that payments are made on installment basis, where the down payment is made upon signing the contract and the last payment on or before July 23, 2008, still, since full payment and not only 25% were made within the entire year, the withholding agent shall withhold the CWT based on the gross selling price or fair market value of the property, whichever is higher, *on the first installment.* In 

which case, the CWT should be withheld on May 23, 2008. The amount of the CWT shown in the diagram should be remitted within ten (10) days of the following month. The only exception to the rule is when [respondent] is considered an EFPS taxpayer, in which case, the remittance should be made 5 days after the deadline set or fifteen (15) days following the month of sale.

In the case at hand, [respondent] should pay the entire CWT on the date of the actual sale on May 23, 2008 and not only July 23, 2008. For having belatedly paid the same, through its withholding agent, on July 23, 2008, the withholding agent ought to pay the interest and surcharges as provided under Section 248 and 249 of the NIRC of the 1997, as amended. In addition, the Withholding Agent failed to file BIR Form No. 1606 (Withholding Tax Remittance Return [For Transactions Involving Real Property Other than Capital Asset including Taxable and Exempt]).

14. [Respondent] anchored its assertion that it is exempt from the payment of CWT on the basis of the tax rulings it alleged in its Petition for Review. [Respondent] heavily invoked and relied on said rulings in applying for refund of the CWT it allegedly paid to [petitioner]. Assuming for the sake of arguments that indeed said rulings were issued by [petitioner], still it must be stressed that [petitioner's] filing of the Answer is *tantamount to a revocation* of the tax rulings issued.

In the case entitled 'Commissioner of Internal Revenue, *petitioner* vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc. *respondent*, the Supreme Court had the occasion to say:


'Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95. However, such revocation cannot be given retroactive effect since it will prejudice respondent. *jc*

Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax. Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer. Further, there is no showing of the existence of any of the exceptions enumerated in Section 246 of the Tax Code for the retroactive application of such revocation.

However, upon the filing of petitioner's Answer dated 2 March 2000 before the CTA contesting respondent's claim for refund, respondent's services shall be subject to the regular 10% VAT. Such filing is deemed a revocation of Vat Ruling No. 003-99 and BIR Ruling No. 023-95'. (Emphasis and underscoring supplied)

It must be stressed that tax rulings issued and alleged in the Petition for Review do not pertain to the particular sale transaction made by [respondent]. In addition, tax [r]ulings are issued primarily based on the facts presented by the applicants. Hence, tax rulings may vary from time to time depending on the set of facts that may be presented. As the concluding remarks of tax rulings state:

'This ruling is issued on the basis of the foregoing facts are (*sic*) represented. However, **if upon investigation**, it will be ascertained that the **facts are different**, then this ruling shall be considered **null and void**.' (Emphasis and underscoring supplied)

Ergo, tax rulings are not considered final, hence, may be the subject of revocation at any time depending on the further investigation that may be conducted. 


It must likewise be stressed that [respondent] did not request for a tax ruling before the Office of the Commissioner of Internal Revenue prior to the intended sale on May 23, 2008. It was only on May 28, 2008 that [respondent] was able to request for a ruling which is way beyond the May 23, 2008 sale transactions.

The Four (4) Contracts to Sell made and entered into on May 23, 2008 by [respondent] and its buyers reveal the following:

ARTICLE IV.
TITLE AND OWNERSHIP OF SUBJECT
PROPERTY

SECTION 1. Title to the Subject Property. – Title to the subject property is reserved in the name of BCDA until full and complete payment of the Purchase Price. Only upon full and complete payment by the BUYER of the purchase price in accordance with the provisions of Article III Section 1 above shall BCDA execute a Deed of Absolute Sale in favour of the BUYER, which shall substantially be in the form attached thereto as Annex 'H'. Coincidentally with the signing of the Deed of Absolute Sale, and (iii) Real Property Tax Clearance covering the subject property **as well as the document evidencing payment of the Creditable Withholding Tax due on the sale of the Subject Property**, if any.

xxx


SECTION 3. Taxes, Fees and Expenses – Except for the Creditable Withholding Tax, if any, all applicable taxes, fees and any other charges related to the sale, transfer and registration of the Subject Property, such as, but not limited to, when such is applicable, documentary stamp taxes (DST), business or city taxes, transfer taxes and registration fees and other charges shall be for the account of the BUYER. xxx 

ARTICLE V
DELIVERY OF THE SUBJECT PROPERTY

Section 1. Delivery of the Subject Property. Upon full payment of the balance of the Purchase Price and the execution of the Deed of Absolute Sale, BCDA shall deliver to the BUYER the Subject Property on an 'AS IS WHERE IS BASIS'. xxx Coincidentally with BCDA's receipt of full payment for the Balance of the Purchase Price and the execution of the Deed of Absolute Sale, BCDA shall deliver to the BUYER (i) the Transfer Certificate of Titles (TCT), (ii) the Tax Declarations' and (iii) Real Property Tax Clearance covering the Subject property, as well as the document evidencing payment of the Creditable Withholding Tax due on the sale of the Subject property, if any.' (Emphasis and underscoring supplied)

Based on the foregoing, it cannot be gainsaid that [respondent], who prepared the contract, provided a provision pertaining to the payment Creditable Withholding Tax as a sine qua non condition for the delivery of the property and transfer of title over said property. [Respondent] would not have included aforesaid provision had it not been aware that it is liable for payment of the corresponding CWT. It was [respondent] who prepares the stipulations in the contract, the buyers consented by affixing the signature of its authorized representative or its 'adhesion' to bind the party.

In the case entitled, '*Federico Serra vs. The Honorable Court of Tax Appeals and Rizal Commercial Banking Corporation*', the court held:


'A contract of adhesion is one wherein a party, usually a corporation, prepares the stipulations in the contract, while the other party merely affixes his signature or his 'adhesion' thereto. These types of contracts are as binding as ordinary contracts. 

Because in reality, the party who adheres to the contract is free to reject it entirely. Although, this Court will not hesitate to rule out blind adherence to terms where facts and circumstances will show that it is basically one-sided.' (Emphasis and underscoring supplied)

15. In order to be entitled to the refund being sought, [respondent] must satisfactorily comply with the following requisites:

- a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;
- b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
- c.) That the income upon which the taxes were withheld were included in the return of the recipient.

[Respondent] failed to state that the Income pertaining to the sales made on May 23, 2008 were included as part of the Income declared in its Annual Income Tax Returns for taxable year 2008. In relation thereto, the Financial Statements alleged in its Petition for Review were not audited by the Commission of Audit, hence, not reflective of the true financial condition and net worth of [respondent].

As found in the document denominated as 'A Report of Independent Certified Public Accountants to Accompany Income Tax Return' duly signed by Ma. Sylva Z. Isiderio, State Auditor V, Commission on Audit and which is attached to the Petition for Review as Annex 'L', it clearly provides: 

'The accompanying balance sheet of the Bases Conversion and Development Authority as of December 31, 2009 and the related statements of income for the year then ended were prepared from the Authority's books.

These financial statements are subject to any additional adjustments as may be disclosed upon the completion of our examination. Since the audit is currently in progress, we are unable to express an opinion on the fairness of the presentation of the financial statements.

Likewise, for the same reason stated above, to date, **we are not in a position to comply with the required audited financial statements** of the above authority for the year ended December 31, 2009. (Emphasis and underscoring supplied)

16. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

17. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

18. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (*Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sealand Service Vs. Court of Appeals*, 357 SCRA 444)." (Citation omitted) *gr*

Within the allowed period, [respondent] filed on November 9, 2010 its Reply to [petitioner's] Answer. [Respondent] states therein that (1) the proceeds from the sale of the "Expanded Big Delta Lots" to the "NetGroup" is not subject to CWT, and (2) the grant of tax exemption to [respondent] pursuant to Section 8 of RA No. 7227, as amended, prevails over the alleged withdrawal of exemption pursuant to RA No. 8424 or the "Tax Reform Act of 1997".


During pre-trial, both parties filed their respective pre-trial briefs. The parties also filed their Joint Stipulation of Facts and Issues on June 21, 2011 and the Court approved it in the Resolution dated June 23, 2011. In the same Resolution, the pre-trial was deemed terminated and the parties were ordered to proceed with the trial.

During trial, [respondent] presented its testimonial and documentary evidence. Its pieces of documentary evidence were admitted in the Court's Resolution dated October 25, 2012. On the other hand, in a hearing held on January 16, 2013, [petitioner's] counsel manifested that she has no witness to present. Upon motion of the parties, they were granted thirty (30) days or until February 15, 2013 to file their respective memoranda.

The parties filed their respective memoranda within the extended period allowed by this Court. Subsequently, the case was submitted for decision on April 26, 2013.

The Court in Division was confronted with the issue of whether the respondent enjoys exemption from all forms of taxes and if in the negative, whether or not the proceeds on the sale of the Expanded Big Delta Lots in favor of the Net Group are subject to Creditable Withholding Tax (CWT).

The Court in Division ruled for the respondent by holding that while the latter is not a tax exempt entity, the proceeds from its sale of a portion of Metro Manila military camps are nevertheless exempt from all forms of taxes, including income tax pursuant to its charter. Moreover, records indicate that the respondent faithfully complied with the substantiation requirements for it to be entitled to a refund. The dispositive portion of the assailed Decision and Resolution on the Motion for Reconsideration provides:

Decision dated September 13, 2013: 

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 ₱101,637,466.40, 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.³

Resolution dated January 30, 2014:

WHEREFORE, the motion for reconsideration filed by respondent is **DENIED** for lack of merit.

SO ORDERED.⁴

Not satisfied with the findings and conclusions arrived at by the Court in Division, petitioner elevated her present recourse before this Court via a Petition for Review.⁵ Acting on the petition, this Court in a resolution dated April 22, 2014 directed respondent to file its comment within ten (10) days from receipt thereof.⁶

With the respondent's comment on the petition dated June 3, 2014,⁷ the Court gave due course to the petition for review and accordingly ordered both parties to submit their respective memorandum within thirty (30) days from receipt of the Court's Resolution.⁸

On July 31, 2014, respondent filed its memorandum.⁹ For her part, petitioner manifested that she is adopting the arguments previously raised in her Petition for Review dated March 7, 2014 as her memorandum for this case.¹⁰ Thereafter, on August 28, 2014, the Court noted petitioner's manifestation and accordingly submitted this case for decision.¹¹ *gr*

³ Id. at 76.

⁴ Id. at 79.

⁵ Id. at 7-47.

⁶ Id. at 84-85.

⁷ Id. at 90-108.

⁸ Id. at 112-113.

⁹ Id. at 114-134.

¹⁰ Id. at 138-139.

¹¹ Id. at 143-144.

Hence, this Decision.

The Issues

Petitioner submits the following assignment of errors for the Court's resolution, to wit:

I.

The Honorable Court erred in exempting respondent from paying taxes. Respondent is not exempt to pay taxes pursuant to Section 27 (C) of the National Internal Revenue Code of 1997, as amended.

II.

The Honorable Court erred when it did not rule whether respondent failed to comply with the requisite that the income from which taxes were withheld was included as part of its gross income.

III.

The Honorable Court erred when it did not rule that respondent failed to choose the option to refund its excess unutilized creditable withholding tax in its 2008 ITR resulting to the automatic carry-over of any excess tax credit for taxable year 2008.

The Court's Ruling

Respondent is not an exempt corporation under Section 27(C) of the 1997 Tax Code.

In support of its position, petitioner argues that there is nothing in Section 27(C) of the National Internal Revenue Code of 1997, as amended (1997 Tax Code) which states that the respondent is among those who are exempt from the payment of income tax since only the Government Service Insurance System (GSIS), Social Security System (SSS), Philippine Charity Sweepstakes Office (PCSO), and Philippine Health Insurance Corporation (PHIC) are listed as exempt under the 1997 Tax Code. Petitioner mentions the withdrawal of the tax-exempt status of Philippine Amusement and Gaming Corporation (PAGCOR) under Republic Act No. 9337, and *gc*

the addition of Local Water Districts (LWDs) as a tax-exempt corporation under Republic Act No. 10026.


In other words, petitioner argues that only GSIS, SSS, PHIC, PAGCOR and LWDs are listed under the law as a tax exempt corporation. Hence, respondent is not among those who enjoy such similar exemption and this is consistent with the principle in statutory construction *expressio unius est exclusio alterius*.

We agree with the petitioner on this point. It is an elementary principle that taxation is the rule and exemption is the exception.¹² The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.¹³ As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically and supported by a clear legal provision.¹⁴

In the case at bar, nowhere in Section 27(C) of the 1997 Tax Code as amended by Republic Act Nos. 9337 and 10026 where respondent is listed as exempt from corporate income tax. This is founded on a basic precept of statutory construction that the express mention of one person, thing, or act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.¹⁵

Ergo, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excluded, respondent Bases Conversion Development Authority must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim *exceptio firmat regulam in casibus non exceptis* [the express mention of exceptions operates to exclude other exceptions].¹⁶

However, the sale of the "Expanded Big Delta Lots" is exempt from tax under Republic Act No. 7227, as amended by Republic Act No. 7917.

Petitioner argues that respondent's invocation of Republic Act No. 7227 must fail. She claims that Sec. 27(C) of the 1997 Tax Code as further amended by Republic Act Nos. 9337 and 10026 cannot be overridden by Republic Act No. 7227 

¹² *National Power Corporation v. Province of Isabela*, G.R. No. 165827, June 16, 2006, 491 SCRA 169-184, 180.

¹³ *Id.*

¹⁴ *Philippine Amusement and Gaming Corporation v. The Bureau of Internal Revenue*, G.R. No. 172087, March 15, 2011, 645 SCRA 338-366, 355.

¹⁵ *Id.*

¹⁶ *Id.* *South African Airways v. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010, 612 SCRA 665-684.

for the reason that a later law repeals an earlier one because it is the later legislative will.

Respondent however took a different stance by arguing that although Section 27(C) does not make mention of its tax-exempt status, it is *non sequitur* that Republic Act No. 7227 as amended by Republic Act No. 7917 was repealed either. Moreover, the same 1997 Tax Code under Section 32(B)(7)(b) excludes from the gross income and exempts from income tax, the income derived from the discharge of any essential governmental functions accruing to the Government of the Philippines or to any political subdivisions. Respondent also cited Section 2.57.5 of Revenue Regulations No. 2-98 which provides that withholding of CWT should not apply to income payments made to National Government and its instrumentalities.

As likewise mentioned in its comment, Section 8 of Republic Act No. 7227, as amended by Republic Act No. 7917 clearly provides that the proceeds from respondent's sale of government lands and other properties are exempt from all forms of taxes and fees. Respondent hastened to add that under Administrative Order No. 236, the proceeds from the sale of government lands and other properties falling under Republic Act No. 7227, as amended are government funds and shall be remitted to the National Treasury and eventually accrue to the General Fund of the Government; that funds are automatically appropriated for the budget requirement of the several beneficiary-agencies identified under Republic Act No. 7917.

We agree with the respondent.

Pertinent to the resolution of this issue is Republic Act No. 7227, as amended by Republic Act No. 7917 of which Section 1 provides:

SECTION 1. Paragraph (d), Section 8 of Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992, is hereby amended to read as follows:


(d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: Provided, further, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.

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 *re*

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: xxx**

The provisions of law to the contrary notwithstanding, **the proceeds of the sale thereof shall not be diminished and, therefor, exempt from all forms of taxes and fees.** (With emphasis)

By its very terms, proceeds of the sale of the respondent of portion of camps located in Metro Manila are exempt from all forms of taxes. **To tax the proceeds of the sale would be to tax an appropriation made by law, a power that the Commissioner of Internal Revenue does not have.**¹⁷ **The sale is in the nature of an obligation imposed by law in order to fulfill a public purpose.**¹⁸ Thus, we affirm the Court in Division when it explicitly held:

Thus, petitioner [herein respondent] is obliged to pay corporate income tax under either the 1977 NIRC or the NIRC of 1997, as amended by RA No. 9337, albeit petitioner's [respondent's] income tax liability is limited to its taxable income only. Since RA No. 7227, as amended by RA No. 7917 exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, which necessarily includes income tax, said proceeds do not form part of petitioner's taxable income. The proceeds of the sale of portions of Metro Manila military camps, not being part of petitioner's taxable income, are exempt from income tax and consequently, from CWT. **To emphasize, while petitioner is not entitled to exemption from income tax, the proceeds from the sale of portions of Metro Manila military camps are tax exempt.** (With Emphasis) 

¹⁷ *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 164155 & 175543, February 25, 2013, 691 SCRA 523, 529.

¹⁸ *Id.* at 530.

Notably, if we sustain petitioner's barren assertions that respondent should be taxed on its sale of the Expanded Big Delta Lots, such payment would in effect have resulted in diminishing the proceeds of the sale that the Republic received and turned over to the respondent to capitalize it.¹⁹ Under Section 8 of Republic Act No. 7227, it is clear that the capital of the respondent, 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 tax.²⁰ To reiterate, Section 1 of Republic Act No. 7917 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including income taxes. This is further supported by Administrative Order No. 236 entitled, "*Prescribing Rules and Regulations on the Collection, Remittance and Utilization of Sales Proceeds Under Republic Act No. 7227, as amended by Republic Act No. 7917*," which reads:

The proceeds from the sale of government lands and other properties pursuant to Section 8 of RA 7227 as amended by RA 7917, are hereby declared government funds and shall be remitted to the National Treasury and shall accrue to the General Fund of the Government.

Had Congress intended to repeal Republic Act 7227, as amended by Republic Act No. 7917, it could have easily done so. It is a well settled rule of statutory construction that repeals by implication are not favored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice. Moreover, the failure to add a specific repealing clause indicates that the intent was

¹⁹ Id. 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 (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**

²⁰ Id.


not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in terms of the new and old laws.²¹

In addition, between Republic Act No. 7227, as amended by Republic Act No. 7917, one hand, which is a special law governing the Bases Conversion and Development Authority, which took effect in 1995; and the 1997 Tax Code, on the other, which is the general law on national internal revenue taxes, that took effect on January 1, 1998, the former prevails. Where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special—the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.²²

Therefore, consistent with the ruling of the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,²³ it is certain from the respondent's charter, particularly in Section 8 of Republic Act No. 7227 that the capital of BCDA, which shall come from the sales proceeds and transfers of certain Metro Manila military camps are tax exempt.

The sale is an income derived by the Government in the exercise of governmental functions; hence, excluded from gross income. Moreover, Section 76 of the 1997 Tax Code is inapplicable insofar as the respondent's sale of the Expanded Big Delta Lots is concerned.

Petitioner claims that in a claim for refund of CWT, respondent must prove that the income from which taxes were withheld was included as part of the gross income. Petitioner avers that the certificates of CWT, payment forms and deposit slips are not sufficient to justify its refund claim—respondent must indicate in its return that the income received must be declared as part of respondent's gross income.

Petitioner further argues that the Court in Division did not rule on the issue concerning respondent's failure to choose an option to refund or for issuance of tax 

²¹ *Remman Enterprises, Inc., et al. v. Professional Regulatory Board of Real Estate Service, et al.*, G.R. No. 197676, February 4, 2014.

²² *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009, 592 SCRA 237-268, 259-260.

²³ *Supra* at note 17.

credit certificate under Section 76 of the 1997 Tax Code. Petitioner hinges on the fact that the act of the respondent in including its 2008 excess credit to its 2009 income tax return only shows that respondent already opted to carry over its unutilized creditable withholding tax. Said carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the 1997 Tax Code. Therefore, respondent is already barred from claiming the refund.

Petitioner is mistaken.

Section 32 of the 1997 Tax Code, provides:

Sec. 32. *Gross Income.* –

X X X X

(B) *Exclusions from Gross Income.* – The following items shall not be included in the gross income and shall be exempt from taxation under this Title:

X X X X

(7) *Miscellaneous Items.* –

X X X X

(b) *Income Derived by the Government or its Political Subdivisions.* – Income derived by any public utility or **from the exercise of any essential governmental functions accruing to the Government of the Philippines** or to any political subdivisions thereof. (Emphasis added)

X X X X

Further, under Sec. 2.57.5 of Revenue Regulations No. 2-98, the creditable withholding tax system does not apply to the National Government and its instrumentalities, which provides:

SECTION 2.57.5. *Exemption from Withholding.* – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following: *gc*

(A) National government and its instrumentalities, including provincial, city or municipal governments;

Combining both the foregoing provisions, and in consonance with its charter, respondent is not required to declare the sale of the Expanded Big Delta Lots to the Net Group since this is an exercise of its governmental functions pursuant to Republic Act No. 7227, as amended by Republic Act No. 7917 and therefore, such transaction is excluded from gross income and exempted from withholding tax. On this score, we affirm the ruling of the Court in Division on this matter:

Suffice it to say that there is no need to rule on whether the income from which taxes were withheld was included as part of the gross income since compliance with the said requirement is vital only for refund of excessive income tax payments or excess creditable withholding tax sanctioned under Section 76 of the NIRC, and not to a claim for refund of erroneously remitted tax, which the withholding agents should not have withheld and remitted to the BIR in the first place. As amplified in the assailed Decision, the income subjected to withholding pertains to the proceeds from petitioner's sale of portions of Metro Manila military camps which proceeds are exempt from income tax pursuant to petitioner's charter. (With emphasis and underlining)

Finally, petitioner's reliance in the cases of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,²⁴ *United International Pictures AB v. Commissioner of Internal Revenue*,²⁵ and *Asiaworld Properties Phil. Corp. v. Commissioner of Internal Revenue*,²⁶ is misplaced. It is noteworthy that the petitioner-taxpayers in these cases do not have a tax-exempt provision on its transactions that is akin to respondent's charter.

It is a truism that tax refunds are in the nature of tax exemptions and are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The Supreme Court held that one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.²⁷ However, the rule on strict interpretation of tax exemption does not justify a denial of a claim for refund where the taxpayer has sufficiently proven the factual and legal basis for its exemption and the fact of payment of the same to the taxing authorities. *pc*

²⁴ G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761.

²⁵ G.R. No. 168331, October 11, 2012, 684 SCRA 23-33.

²⁶ G.R. No. 171766, July 29, 2010, 626 SCRA 172-179.

²⁷ *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007, 512 SCRA 556-568.

DECISION

CTA EB No. 1123 (CTA Case No. 8140)

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With all the foregoing discussions, the Court will no longer belabor on the remaining arguments raised therein.

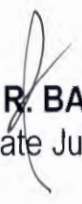
WHEREFORE, the instant petition is **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution on the Motion for Reconsideration in CTA Case No. 8140 are **AFFIRMED**.

SO ORDERED.

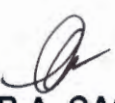

JUANITO C. CASTAÑEDA, JR.
Associate Justice


WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

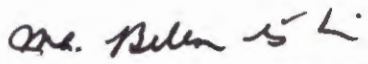

ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

DECISION

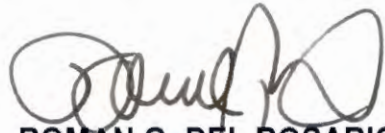
CTA EB No. 1123 (CTA Case No. 8140)

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', is written over the printed name.

ROMAN G. DEL ROSARIO
Presiding Justice