COMMISSION OF INTERNAL REVENUE, PETITIONER, VS. AQUAFRESH SEAFOODS, INC., RESPONDENT.

G.R. No. 170389. October 20, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the November 9, 2005 Decision[2] of the Court of Tax Appeals (CTA) En Banc in CTA-E.B. No. 77. The CTA En Banc affirmed the December 22, 2004 Decision of the CTA First Division.

The facts of the case are as follows:

On June 7, 1999, respondent Aquafresh Seafoods Inc. sold to Philips Seafoods, Inc. two parcels of land, including improvements thereon, located at Barrio Banica, Roxas City, for the consideration of Three Million One Hundred Thousand Pesos (Php 3,100, 000.00). Said properties were covered under Transfer Certificate of Titles Nos. T-21799 and T-21804.

Respondent then filed a Capital Gains Tax Return/Application for Certification Authorizing Registration and paid the amount of Php186,000.00, representing the Capital Gains Tax (CGT) and the amount of Php46,500.00, representing the Documentary Stamp Tax (DST) due from the said sale. Subsequently, Revenue District Officer Gil G. Tabanda issued Certificate Authorizing Registration No. 1071477.

The Bureau of Internal Revenue (BIR), however, received a report that the lots sold were undervalued for taxation purposes. This prompted the Special Investigation Division (SID) of the BIR to conduct an occular inspection over the properties. After the investigation, the SID concluded that the subject properties were commercial with a zonal value of Php2,000.00 per square meter.

On September 15, 2000, Regional Director Leonardo Q. Sacamos (Director Sacamos) of the Revenue Region Iloilo City sent two Assessment Notices apprising respondent of CGT and DST defencies in the sum of Php1,372,171.46 and Php356,267.62, respectively. Director Sacamos relied on the findings of the SID that the subject properties were commercial with a zonal valuation of Php2,000.00 per square meter.

On October 1, 2000, respondent sent a letter protesting the assessments made by Director Sacamos. On December 1, 2000, Director Sacamos denied respondent's protest for lack of legal basis. Respondent appealed, but the same was denied with finality on February 13, 2002.

On March 19, 2002, respondent filed a petition for review[3] before the CTA seeking the reversal of the denial of its protest. The main thrust of respondent's petition was that the subject properties were located in Barrio Banica, Roxas, where the pre-defined zonal value was Php650.00 per square meter based on the "Revised Zonal Values of Real Properties in the City of Roxas under Revenue District Office No. 72 - Roxas City" (1995 Revised Zonal Values of Real Properties). Respondent asserted that the subject properties were classified as "RR" or residential and not commercial. Respondent argued that since there was already a pre-defined zonal value for properties

located in Barrio Banica, the BIR officials had no business re-classifying the subject properties to commercial.

On December 22, 2004, the CTA promulgated a Decision[4] ruling in favor of respondent, the dispositive portion of which reads:

> IN VIEW OF THE FOREGOING, respondent's assessments for deficiency capital against tax and documentary stamp taxes are hereby CANCELLED and SET ASIDE. x x x
>
> SO ORDERED.[5]

Ruling in favor of respondent, the CTA opined that that the existing Revised Zonal Values in the City of Roxas should prevail for purposes of determining respondent's tax liabilities, thus:

> While respondent is given the authority to determine the fair market value of the subject properties for the purpose of computing internal revenue taxes, such authority is not without restriction or limitation. The first sentence of Section 6(E) sets the limitation or condition in the exercise of such power by requiring respondent to consult with competent appraisers both from private and public sectors. As there was no re-evaluation and no revision of the zonal values of the subject properties in Roxas City at the time of the sale, respondent cannot unilaterally determine the zonal values of the subject properties by invoking his powers of obtaining information and making assessments under Sections 5 and 6 of the NIRC. The existing Revised Zonal Values of Real Properties in the City of Roxas shall prevail for the purpose of determining the proper tax liabilities of petitioner.[6]

Petitioner Commissioner of Internal Revenue filed a Motion for Reconsideration, which was, however, denied by the CTA in a Resolution[7] dated April 4, 2005.

Petitioner then appealed to the CTA En Banc.

In a Decision dated November 9, 2005, the CTA En Banc dismissed petitioner's appeal, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition for Review is DISMISSED for lack of merit.
>
> SO ORDERED.[8]

The CTA En Banc ruled that the 1995 Revised Zonal Values of Real Properties should prevail. Said court relied on Section 6 (E) of the National Internal Revenue Code (NIRC) which requires consultation from appraisers, from both the public and private sectors, in fixing the zonal valuation of properties. The CTA En Banc held that petitioner failed to prove any amendment effected on the 1995 Revised Zonal Values of Real Properties at the time of the sale of the subject properties.

Hence, herein petition, with petitioner raising the following issues for this Court's resolution, to wit:

> I.
>
> WHETHER OR NOT THE REQUIREMENT OF CONSULTATION WITH COMPETENT APPRAISERS BOTH FROM THE PRIVATE AND PUBLIC SECTORS IN DETERMINING THE FAIR MARKET VALUE OF THE SUBJECT LOTS IS APPLICABLE IN THE CASE AT BAR.
>
> II.
>
> WHETHER OR NOT THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE ERROR IN APPLYING THE FAIR MARKET VALUE BASED ON THE ZONAL VALUATION OF A RESIDENTIAL LAND AS TAX BASE IN THE COMPUTATION OF CAPITAL GAINS TAX AND DOCUMENTARY STAMP TAX DEFICIENCIES OF RESPONDENT.[9]

The petition is not meritorious. The issues being interrelated, this Court shall discuss the same in seriatim.

Under Section 27(D)(5) of the NIRC of 1997, a CGT of six (6%) percent is imposed on the gains presumed to have been realized in the sale, exchange or disposition of lands and/or buildings which are not actively used in the business of a corporation and which are treated as capital assets based on the gross selling price or fair market value as determined in accordance with Section 6(E) of the NIRC, whichever is higher.

On the other hand, under Section 196 of the NIRC, DST is based on the consideration contracted to be paid or on its fair market value determined in accordance with Section 6(E) of the NIRC, whichever is higher.

Thus, in determining the value of CGT and DST arising from the sale of a property, the power of the CIR to assess is subject to Section 6(E) of the NIRC, which provides:

> Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -
>
> x x x x
>
> (E) Authority of the Commissioner to Prescribe Real Property Values - The Commissioner is hereby authorized to divide the Philippines into different zones or area and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing internal revenue tax, the value of the property shall be, whichever is higher of:
>
> (1) the fair market value as determined by the Commissioner; or
>
> (2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

While the CIR has the authority to prescribe real property values and divide the Philippines into zones, the law is clear that the same has to be done upon consultation with competent appraisers both from the public and private sectors. It is undisputed that at the time of the sale of the subject properties found in Barrio Banica, Roxas City, the same were classified as "RR," or residential, based on the 1995 Revised Zonal Value of Real Properties. Petitioner, thus, cannot unilaterally change the zonal valuation of such properties to "commercial" without first conducting a re-evaluation of the zonal values as mandated under Section 6(E) of the NIRC.

Petitioner argues, however, that the requirement of consultation with competent appraisers is mandatory only when it is prescribing real property values - that is when a formulation or change is made in the schedule of zonal values. Petitioner also contends that what it did in the instant case was not to prescribe the zonal value, but merely classify the same as commercial and apply the corresponding zonal value for such classification based on the existing schedule of zonal values in Roxas City.[10]

We disagree.

To this Court's mind, petitioner's act of re-classifying the subject properties from residential to commercial cannot be done without first complying with the procedures prescribed by law. It bears to stress that ALL the properties in Barrio Banica were classified as residential, under the 1995 Revised Zonal Values of Real Properties. Thus, petitioner's act of classifying the subject properties involves a re-classification and revision of the prescribed zonal values.

In addition, Revenue Memorandum No. 58-69 provides for the procedures on the establishment of the zonal values of real properties, viz.:

> (1) The submission or review by the Revenue District Offices Sub-Technical Committee of the schedule of

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recommended zonal values to the TCRPV;

(2) The evaluation by TCRPV of the submitted schedule of recommended zonal values of real properties;

(3) Except in cases of correction or adjustment, the TCRPV finalizes the schedule and submits the same to the Executive Committee on Real Property Valuation (ECRPV);

(3) Upon approval of the schedule of zonal values by the ECRPV, the same is embodied in a Department Order for implementation and signed by the Secretary of Finance. Thereafter, the schedule takes effect (15) days after its publication in the Official Gazette or in any newspaper of general circulation.

Petitioner failed to prove that it had complied with Revenue Memorandum No. 58-69 and that a revision of the 1995 Revised Zonal Values of Real Properties was made prior to the sale of the subject properties. Thus, notwithstanding petitioner's disagreement to the classification of the subject properties, the same must be followed for purposes of computing the CGT and DST. It bears stressing, and as observed by the CTA En Banc, that the 1995 Revised Zonal Values of Real Properties was drafted by petitioner, BIR personnel, representatives from the Department of Finance, National Tax Research Center, Institute of Philippine Real Estate Appraisers and Philippine Association of Realtors Board, which duly satisfied the requirement of consultation with public and private appraisers.[11]

Petitioner contends, nevertheless, that its act of classifying the subject properties based on actual use was in accordance with guidelines number 1-b and 2 as set forth in "Certain Guidelines in the Implementation of Zonal Valuation of Real Properties for RDO 72 Roxas City" (Zonal Valuation Guidelines).[12]

Section 1 (b) of the Zonal Valuation Guidelines reads:

1. No zonal value has been prescribed for a particular classification of real property.

Where in the approved schedule of zonal values for a particular barangay -

x x x x

b) No zonal value has been prescribed for a particular classification of real property in one barangay, the zonal value prescribed for the same classification of real property located in an adjacent barangay of similar conditions shall be used.

Section 1 (b) does not apply to the case at bar for the simple reason that said proviso operates only when "no zonal valuation has been prescribed." The properties located in Barrio Banica, Roxas City were already subject to a zonal valuation, a fact which even petitioner has admitted in its petition, thus:

It must be noted that under the schedule of zonal values, Barangay Banica, where the subject lots are situated, has a single classification only - that of a residential area. Accordingly, it has a prescribed zonal value of Php650.00 per square meter.[13]

Petitioner, however, also relies on Section 2 (a) of the Zonal Valuation Guidelines, to justify its action. Said section states:

2. Predominant Use of Property.

a) All real properties, regardless of actual use, located in a street/barangay zone, the use of which are predominantly commercial shall be classified as "Commercial" for purposes of zonal valuation.

In BIR Ruling No. 041-2001, issued on September 18, 2001, the BIR tackled the application of a provision which is identical to Section 2 (a) of the Zonal Valuation Guidelines. BIR Ruling No. 041-2001 involved a request by the Iglesia Ni Cristo that the re-computation of CGT and DST based on the predominant use of the real properties

located at Mindanao Avenue, Quezon City, be set aside. In said case, the Iglesia ni Cristo paid the CGT and DST based on the zonal value of residential lots in Quezon City. The Revenue District Officer, however, ordered a re-computation of the CGT and DST based on the ground that the real property is located in a predominantly commercial area and must be classified as commercial for purposes of zonal valuation. The BIR ruled in favor of Iglesia ni Cristo stating that "Certain Guidelines in the Implementation of Zonal Valuation of Real Properties for RDO No. 38, applying the predominant use of property as the basis for the computation of the Capital Gains and Documentary Stamp Taxes, shall apply only when the real property is located in an area or zone where the properties are not yet classified and their respective zonal valuation are not yet determined." The pertinent portion of BIR Ruling No. 041-2001 reads:

> In reply, please be informed that this Office finds your request meritorious. The number 2 guideline laid down in Certain Guidelines in the implementation of Zonal valuation of Real Properties for RDO No. 38- North Quezon City xxx does not apply to this case.
>
> Number 2 of the CERTAIN GUIDELINES IN THE IMPLEMENTATION OF ZONAL VALUATION OF REAL PROPERTIES FOR RD NO. 38 - NORTH QUEZON CITY" provides:
>
> "2. PREDOMINANT USE OF PROPERTY:
>
> ALL REAL PROPERTIES REGARDLESS OF ACTUAL USE, LOCATED IN A STREET/BARANGAY ZONE, THE USE OF WHICH ARE PREDOMINANTLY COMMERCIAL SHALL BE CLASSIFIED AS 'COMMERICIAL'FOR PURPOSES OF ZONAL VALUATION."

It is the considered opinion of this Office that the guideline applies when the real property is located in an area or zone where the properties are not yet classified and their respective zonal valuation are not yet determined.

In the instant case, however, the classification and valuation of the properties located in Mindanao Avenue, Bagong Bantay, have already been determined. Under Department of Finance Order No. 6-2000, the properties along Mindanao Avenue had already been classified as residential and commercial. The zonal valuation thereof had already been determined. x x x Therefore, the Revenue District Officer of RDO No. 38 has no discretion to determine the classification or valuation of the properties located in the pertinent area. The computation of the capital gains and documentary stamp taxes shall be based on the zonal of residential properties located at Mindanao Avenue, Bago Bantay, Quezon City.[14]

Based on the foregoing, this Court need not belabour on the applicability of Section 2 (a), as the BIR itself has already ruled that the same shall apply only when the real property is located in an area or zone where the properties are not yet classified and their respective zonal valuation are not yet determined. As mentioned earlier, the subject properties were already part of the 1995 Revised Zonal Value of Real Properties which classified the same as residential with a zonal value of Php650.00 per square meter; thus, Section 2 (a) clearly has no application.

This Court agrees with the observation of the CTA that "zonal valuation was established with the objective of having an `efficient tax administration by minimizing the use of discretion in the determination of the tax based on the part of the administrator on one hand and the taxpayer on the other hand.'"[15] Zonal value is determined for the purpose of establishing a more realistic basis for real property valuation. Since internal revenue taxes, such as CGT and DST, are assessed on the basis of valuation, the zonal valuation existing at the time of the sale should be taken into account.[16]

If petitioner feels that the properties in Barrio Banica should also be classified as commercial, then petitioner should work for its revision in accordance with Revenue Memorandum Order No. 58-69. The burden was on

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petitioner to prove that the classification and zonal valuation in Barrio Banica have been revised in accordance with the prevailing memorandum. In the absence of proof to the contrary, the 1995 Revised Zonal Values of Real Properties must be followed.

Lastly, this Court takes note of the wording of Section 2 (b) of the Zonal Valuation Guidelines, to wit:

> 2. Predominant Use of Property.
>
> b) The predominant use of other classification of properties located in a street/barangay zone, regardless of actual use shall be considered for purposes of zonal valuation.

Based thereon, this Court rules that even assuming arguendo that the subject properties were used for commercial purposes, the same remains to be residential for zonal value purposes. It appears that actual use is not considered for zonal valuation, but the predominant use of other classification of properties located in the zone. Again, it is undisputed that the entire Barrio Banica has been classified as residential.

WHEREFORE, premises considered, the petition is denied. The November 9, 2005 Decision of the Court of Tax Appeals En Banc, in CTA-E.B. No. 77, is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Mendoza, and Sereno,[**] JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 905, dated October 5, 2010.

[**] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated October 20, 2010.

[1] Rollo, pp. 7-18.

[2]Penned by Associate Justice Erlinda P. Uy, with Associate Justices Ernesto D. Acosta, Juanito C. Castaneda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; id. at 21-35.

[3]Docketed as C.T.A. Case No. 6409.

[4] Id. at 36-48.

[5] Id. at 47.

[6] Id. at 44.

[7] Id. at 49-53.

[8] Id. at 35.

[9] Id. at 12.

[10] Rollo, p. 14.

[11]Id. at 32.

[12] Id. at 15.

[13] Id.

[14] Prof. Eustacio O. Ordono, "BIR Rulings 2000-2001, Digest, Text and Index," pp. 657-658. (Emphasis and underscoring supplied.)

[15] Rollo, p. 44, citing Gallardo, Zonal - A Property Valuation for Income & Transfer Taxes, Philippine Revenue Journal, p. 8., March-April 1994.

[16] Hector M. De Leon and Hector S. De Leon Jr., The National Internal Revenue Code Annotated. 2003 Edition, Vol. 1, p. 133.

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