Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

LA TONDEÑA DISTILLERS, INC. (LTDI [now GINEBRA SAN MIGUEL],
Respondent.

G.R. No. 175188

Present:

PERALTA,*
BERSAMIN,**
DEL CASTILLO
*Acting Chairperson,****
MENDOZA, *and*
LEONEN, *JJ.*

Promulgated:
15 JUL 2015

x - x

DECISION

DEL CASTILLO, *J.*:

The transfer of real property to a surviving corporation pursuant to a merger is not subject to Documentary Stamp Tax (DST).[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the September 26, 2006 Decision[3] and the October 31, 2006 Resolution[4] of the Court of Tax Appeals (CTA) in C.T.A. EB No. 178.

Factual Antecedents

On September 17, 2001, respondent La Tondeña Distillers, Inc. entered into

* Per Special Order No. 2088 dated July 1, 2015.
** Per Special Order No. 2079 dated June 29, 2015.
*** Per Special Order No. 2087 (Revised) dated July 1, 2015.
1 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 192398, September 29, 2014, 736 SCRA 623, 640.
2 *Rollo*, pp. 8-20.
3 Id. at 22-30; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.
4 Id. at 32-33.

a Plan of Merger[5] with Sugarland Beverage Corporation (SBC), SMC Juice, Inc. (SMCJI), and Metro Bottled Water Corporation (MBWC).[6] As a result of the merger, the assets and liabilities of the absorbed corporations were transferred to respondent, the surviving corporation.[7] Respondent later changed its corporate name to Ginebra San Miguel, Inc. (GSMI).[8]

On September 26, 2001, respondent requested for a confirmation of the tax-free nature of the said merger from the Bureau of Internal Revenue (BIR).[9]

On November 5, 2001, the BIR issued a ruling stating that pursuant to Section 40(C)(2)[10] and (6)(b)[11] of the 1997 National Internal Revenue Code (NIRC), no gain or loss shall be recognized by the absorbed corporations as transferors of all assets and liabilities.[12] However, the transfer of assets, such as real properties, shall be subject to DST imposed under Section 196[13] of the NIRC.[14]

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[5] Id. at 69; the Securities and Exchange Commission (SEC) approved the Plan of Merger on October 15, 2001.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 70.

[10] SEC. 40. Determination of Amount and Recognition of Gain or Loss. –
x x x x
(C) Exchange of Property. – x x x
(2) Exception**.** - No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation -
(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or
(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or
(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in such corporation, a party to the merger or consolidation.
No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.

[11] (6) Definitions. –
b) The term 'merger' or 'consolidation', when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transactions shall be treated as a single unit: Provided, finally , That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term 'property' shall be taken to include the cash assets of the transferor.

[12] *Rollo*, p. 70.

[13] SEC. 196. Stamp tax on Deeds of Sale and Conveyances 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 land, tenement, 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 rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government the tax herein imposed shall be based on the actual consideration.
(a) When the consideration, or value received or contracted to be paid for such realty after making proper allowance of any encumbrance, does not exceed One thousand pesos (□1,000.00) fifteen pesos (□15.00).

Consequently, on various dates from October 31, 2001 to November 15, 2001, respondent paid to the BIR the following DST, to wit:

Property Locations	Total Assets	DST Payments
A. Metro Bottled Water Corp.		
General Trias, Cavite	₱326,508,953.00[15]	₱4,897,635.00
Mandaue City, Cebu	14,078,381.00	211,185.00
Pavia, Iloilo	10,644,861.00	159,675.00
B. Sugarland Beverage Corp.		
Navotas, Metro Manila	171,790,790.00	2,576,865.00
Imus, Cavite	218,114,261.00	3,272,175.00
Pine Street, Mandaluyong	201,562,148.00	3,023,445.00
Totals	₱942,729,393.00	14,140,980.00[16]

On October 14, 2003, claiming that it is exempt from paying DST, respondent filed with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for tax refund or tax credit in the amount of ₱14,140,980.00, representing the DST it allegedly erroneously paid on the occasion of the merger.[17]

On the same day, respondent filed with the CTA a Petition for Review, docketed as C.T.A. Case No. 6796 and raffled to the Second (2nd) Division of the CTA.[18]

Ruling of the Court of Tax Appeals Division

On January 6, 2006, the 2nd Division of the CTA rendered a Decision[19] finding respondent entitled to its claim for tax refund or tax credit in the amount of ₱14,140,980.00, representing its erroneously paid DST for the taxable year

(b) For each additional One thousand Pesos (₱1,000.00), or fractional part thereof in excess of One thousand pesos (₱1,000.00) of such consideration or value, Fifteen pesos (₱15.00).

When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument or writing subject to such tax the Commissioner, provincial or city Treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon.

14 *Rollo*, p. 70.

15 Id. at 79; the amount should be ₱326,508,952.00.

16 Id. at 80.

17 Id. at 70.

18 Id. at 70-71.

19 Id. at 68-82; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

2001.[20] The 2nd Division of the CTA ruled that Section 196 of the NIRC does not apply because there is no purchaser or buyer in the case of a merger.[21] Citing Section 80[22] of the Corporation Code of the Philippines, the 2nd Division of the CTA explained that the assets of the absorbed corporations were not bought or purchased by respondent but were transferred to and vested in respondent as an inherent legal consequence of the merger, without any further act or deed.[23] It also noted that any doubts as to the tax-free nature of the merger had been already removed by the subsequent enactment of Republic Act No. (RA) 9243,[24] which amended Section 199[25] of the NIRC by specifically exempting from the payment of DST the transfer of property pursuant to a merger.[26]

Aggrieved, petitioner moved for reconsideration but the 2nd Division of the CTA denied the same in a Resolution dated April 4, 2006.[27]

Unfazed, petitioner elevated the matter to the CTA *En Banc via* a Petition for Review, docketed as C.T.A. EB No. 178.

Ruling of the Court of Tax Appeals En Banc

On September 26, 2006, the CTA *En Banc* rendered the assailed Decision, finding no reversible error on the part of the 2nd Division of the CTA in granting respondent's claim for tax refund or tax credit.[28] The CTA *En Banc* opined that Section 196 of the NIRC does not apply to a merger as the properties subject of a merger are not sold, but are merely absorbed by the surviving corporation.[29] In

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[20] Id. at 81.

[21] Id. at 76.

[22] SEC. 80. Effects of merger or consolidation. — The merger or consolidation shall have the following effects:
x x x x
4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed; x x x

[23] *Rollo*, pp. 74-76.

[24] An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, As Amended, And For Other Purposes; enacted and took effect on April 27, 2004.

[25] SEC. 199. Documents and Papers Not Subject to Stamp Tax. - The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
x x x x
(m) Transfer of property pursuant to Section 40 (C)(2) of the National Internal Revenue Code of 1997, as amended.

[26] *Rollo*, pp. 76-78.

[27] Id. at 25.

[28] Id. at 29.

[29] Id. at 25-29.

other words, the properties are transferred by operation of law, without any further act or deed.[30]

Petitioner sought reconsideration of the assailed Decision.

On October 31, 2006, the CTA *En Banc* issued the assailed Resolution, denying petitioner's motion for reconsideration.[31]

Issue

Hence, petitioner filed the instant Petition for Review on *Certiorari* raising the sole issue of whether the CTA *En Banc* erred in ruling that respondent is exempt from payment of DST.[32]

Petitioner's Arguments

Petitioner posits that DST is levied on the exercise of the privilege to convey real property regardless of the manner of conveyance.[33] Thus, it is imposed on all conveyances of realty, including realty transfer during a corporate merger.[34] As to the subsequent enactment of RA 9243, petitioner claims that respondent cannot benefit from it as laws apply prospectively.[35]

Respondent's Arguments

Respondent, on the other hand, contends that DST is imposed only on conveyances, deeds, instruments, or writing, where realty sold shall be conveyed to a purchaser or buyer.[36] In this case, there is no purchaser or buyer as a merger is neither a sale nor a liquidation of corporate property but a consolidation of properties, powers, and facilities of the constituent companies.[37]

Our Ruling

The Petition must fail.

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[30] Id.
[31] Id. at 32-33.
[32] Id. at 13.
[33] Id. at 13-14.
[34] Id. at 14-16.
[35] Id. at 16.
[36] Id. at 47.
[37] Id. at 49.

In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[38] the Supreme Court already ruled that Section 196 of the NIRC does not include the transfer of real property from one corporation to another pursuant to a merger. It explained that:

> [W]e do not find merit in petitioner's contention that Section 196 covers all transfers and conveyances of real property for a valuable consideration. A perusal of the subject provision would clearly show it pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The phrase "granted, assigned, transferred or otherwise conveyed" is qualified by the word "sold" which means that documentary stamp tax under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. Indeed, as correctly noted by the respondent, the fact that Section 196 refers to words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are contemplated therein.
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> Thus, petitioner obviously erred when it relied on the phrase "granted, assigned, transferred or otherwise conveyed" in claiming that all conveyances of real property regardless of the manner of transfer are subject to documentary stamp tax under Section 196. It is not proper to construe the meaning of a statute on the basis of one part. x x x
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> x x x x
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> It should be emphasized that in the instant case, the transfer of SPPC's real property to respondent was pursuant to their approved plan of merger. In a merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed or merged corporations, there is no winding up of their affairs or liquidation of their assets because the surviving corporation automatically acquires all their rights, privileges, and powers, as well as their liabilities. Here, SPPC ceased to have any legal personality and respondent PSPC stepped into everything that was SPPC's, pursuant to the law and the terms of their Plan of Merger.
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> Pertinently, a merger of two corporations produces the following effects, among others:
>
>> Sec. 80. Effects of merger or consolidation. – x x x
>>
>> x x x x
>> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; **and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporations, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed;**

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[38] Supra note 1.

> In a merger, the real properties are not deemed "sold" to the surviving corporation and the latter could not be considered as "purchaser" of realty since the real properties subject of the merger were merely absorbed by the surviving corporation by operation of law and these properties are deemed automatically transferred to and vested in the surviving corporation without further act or deed. Therefore, the transfer of real properties to the surviving corporation in pursuance of a merger is not subject to documentary stamp tax. As stated at the outset, documentary stamp tax is imposed only on all conveyances, deeds, instruments or writing where realty sold shall be conveyed to a purchaser or purchasers. The transfer of SPPC's real property to respondent was neither a sale nor was it a conveyance of real property for a consideration contracted to be paid as contemplated under Section 196 of the Tax Code. Hence, Section 196 of the Tax Code is inapplicable and respondent is not liable for documentary stamp tax.[39] (Emphasis in the original)

Following the doctrine of *stare decisis,* which dictates that when a court has reached a conclusion in one case, it should be applied to those that follow if the facts are substantially the same, even though the parties may be different,[40] we find that respondent is not liable for DST as the transfer of real properties from the absorbed corporations to respondent was pursuant to a merger. And having complied with the provisions of Sections 204(C)[41] and 229[42] of the NIRC, we agree with the CTA that respondent is entitled to a refund of the DST it erroneously paid on various dates between October 31, 2001 to November 15, 2001 in the total amount of ₱14,140,980.00.

Likewise without merit is petitioner's contention that respondent cannot claim exemption under RA 9243 as this was enacted only in 2004 or after respondent's tax liability accrued. To be clear, respondent did not file its claim for tax refund or tax credit based on the exemption found in RA 9243. Rather, it filed

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39 Id. at 637-640.

40 *Villena v. Spouses Chavez*, 460 Phil. 818, 829 (2003).

41 SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. — The Commissioner may —
x x x x
(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.
No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

42 SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or nor such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such tax appears clearly to have been erroneously paid.

a claim for tax refund or tax credit on the ground that Section 196 of the NIRC does not include the transfer of real property pursuant to a merger. In fact, the *ratio decidendi* (or reason for the decision) in *Pilipinas Shell Petroleum Corporation*[43] was based on Section 196 of the NIRC, in relation to Section 80 of the Corporation Code, not RA 9243. In that case, RA 9243 was mentioned only to emphasize that "the enactment of the said law now removes any doubt and had made clear that the transfer of real properties as a consequence of merger or consolidation is not subject to [DST]."[44]

All told, we find no error on the part of the CTA in granting respondent's claim for tax refund or tax credit in the amount of ₱14,140,980.00, representing its erroneously paid DST for the taxable year 2001.

In closing, we must stress that taxes must not be imposed beyond what the law expressly and clearly declares as tax laws must be construed strictly against the State and liberally in favor of the taxpayer.[45]

WHEREFORE, the Petition is hereby **DENIED**. The assailed September 26, 2006 Decision and the October 31, 2006 Resolution of the Court of Tax Appeals in C.T.A. EB No. 178 are hereby **AFFIRMED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

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43 Supra note 1.
44 Id. at 642-643.
45 *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013, 690 SCRA 28, 45.

LUCAS P. BERSAMIN
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.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.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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