

## THIRD DIVISION

[ G.R. No. 205466, January 11, 2021 ]

### **BASES CONVERSION AND DEVELOPMENT AUTHORITY, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

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

#### **HERNANDO, J.:**

This Petition for Review<sup>[1]</sup> assails the October 10, 2012<sup>[2]</sup> and December 11, 2012<sup>[3]</sup> Resolutions of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 900<sup>[4]</sup> which dismissed the Petition for Review filed by petitioner Bases Conversion and Development Authority (BCDA) against respondent Commissioner of Internal Revenue (CIR),<sup>[5]</sup> and denied BCDA's Motion for Reconsideration,<sup>[6]</sup> respectively.

#### **Antecedents:**

This case involves the question of whether the BCDA is exempt from payment of docket fees before the CTA. The BCDA claims exemption for being a government instrumentality pursuant to Section 22, Rule 141 of the Rules of Court, as amended.<sup>[7]</sup> The CIR, on the other hand, disputes BCDA's status as a government instrumentality, and therefore posits that it is not exempt from payment.

The undisputed facts are as follows.

On February 16, 2011, BCDA filed *via* registered mail a Petition for Review with Request for Exemption from Payment of Filing Fees (Petition for Review) with the CTA involving its claim for refund against the CIR.<sup>[8]</sup> The deadline for filing the Petition for Review fell on February 16, 2011.<sup>[9]</sup>

On March 1, 2011, the BCDA received a letter of even date from Atty. Elvessa P. Apolinario (Atty. Apolinario), CTA's Executive Clerk of Court IV, acknowledging the receipt of the Petition for Review.<sup>[10]</sup> However, in the same letter, Atty. Apolinario informed the BCDA that she was returning the said Petition for Review as it was not deemed filed without the payment of the correct legal fees:

Dear Atty. Creencia:

Please be advised that we received on February 24, 2011, your Request for Exemption from Payment of Filing Fees with the Petition for Review of Bases Conversion and Development Authority (BCDA) v. Commissioner of Internal Revenue. A similar request was denied by the CTA's First Division in CTA Case No. 8176, entitled "Bases Conversion and Development Authority v. Commissioner of Internal Revenue," pursuant to its Resolutions, promulgated on October 20, 2010 and February 8, 2011. Similarly, the Supreme Court has issued a certification, dated

January 20, 2011, addressed to Atty. Theresa G. Cinco-Bactat, Executive Clerk of Court III, stating that the Bases Conversion and Development Authority is not exempt from the payment of legal fees.

In this regard, I am returning the Petition for Review, posted on February 16, 2011, as the same is not deemed filed without payment of the correct legal fees.<sup>[11]</sup>

Subsequent letters were exchanged between Atty. Apolinario, who insisted that the BCDA was required to pay docket fees, and the BCDA, which maintained otherwise and insisted on its status as a government instrumentality.<sup>[12]</sup>

On April 7, 2011, the BCDA paid the docket fees under protest.<sup>[13]</sup>

On December 27, 2011, the CIR filed a Motion to Dismiss<sup>[14]</sup> the BCDA's Petition for Review on the ground of prescription and/or lack of jurisdiction.<sup>[15]</sup> The CIR argued that since the deadline to file the Petition for Review was on February 16, 2011, and the docket fees were paid only on April 7, 2011, then the Petition for Review was not filed on time.<sup>[16]</sup> Thus, the CTA Second Division did not acquire jurisdiction over the case.<sup>[17]</sup>

#### **Ruling of the CTA Second Division:**

On February 3, 2012, the CTA Second Division resolved the CIR's Motion to Dismiss through a Resolution<sup>[18]</sup> dismissing the BCDA's Petition for Review for non-payment of docket fees.<sup>[19]</sup> The CTA Second Division held that timely payment of docket fees was essential before the court can acquire jurisdiction over the case.<sup>[20]</sup> Since the docket fees were not paid on time, the CTA Second Division did not acquire jurisdiction.<sup>[21]</sup>

The dispositive portion of the Resolution reads:

**WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for non-payment of docket fees.

**SO ORDERED.**<sup>[22]</sup>

The BCDA moved for reconsideration which was, however, denied by the CTA Second Division.<sup>[23]</sup> Hence, the BCDA appealed to the CTA *En Banc* through a Petition for Review.<sup>[24]</sup>

#### **Ruling of the CTA *En Banc*:**

In its assailed October 10, 2012 Resolution, the CTA *En Banc* denied due course to the BCDA's Petition for Review.<sup>[25]</sup> It affirmed the CTA Second Division's ruling that the court acquired no jurisdiction due to the belated payment of docket fees.<sup>[26]</sup> The CTA *En Banc* rejected the BCDA's argument that it was exempt from payment, citing the Certification dated January 20, 2011 issued by Ma. Lourdes C. Perfecto, Deputy Clerk of Court and Chief of the Judicial Records Office of the Supreme Court, stating that the BCDA was not exempt from paying the legal fees for petitions before the Supreme Court.<sup>[27]</sup>

The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit and is, accordingly **DISMISSED**.

**SO ORDERED.**<sup>[28]</sup>

The BCDA once again moved for reconsideration which was, however, denied by the CTA *En Banc* in its December 11, 2012 Resolution for failure to include a notice of hearing in the motion.<sup>[29]</sup> Hence, this Petition.

### **Arguments of the BCDA:**

BCDA insists that being a government instrumentality, it is exempt from payment of docket fees pursuant to Section 22, Rule 141 of the Rules of Court, as amended.<sup>[30]</sup> It anchors its status as a government instrumentality on Section 1 of Executive Order No. 596 series of 2006, Republic Act (RA) No. 10149, and this Court's pronouncements in *Manila International Airport Authority v. Court of Appeals and Philippine Fisheries Development Authority v. Court of Appeals*,<sup>[31]</sup> where this Court discussed the nature of Manila International Airport Authority as a government instrumentality and cited the BCDA as among the other government instrumentalities in the country.<sup>[32]</sup>

As to the lack of notice of hearing in its Motion for Reconsideration, the BCDA argues that such notice is not applicable to the CTA *En Banc* since it is not a trier of fact.<sup>[33]</sup> Further, the BCDA notes that under the Revised Rules of Court of Tax Appeals, the filing of a motion for reconsideration is only optional.<sup>[34]</sup> Assuming *arguendo* that a notice of hearing is required, the BCDA requests for liberality from the Court since the motion is on its face meritorious and the interest of substantial justice would be served by giving due course to such motion.<sup>[35]</sup>

In its Manifestation<sup>[36]</sup> dated November 6, 2019, the BCDA calls this Court's attention to the promulgation of the June 20, 2018 case of *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*,<sup>[37]</sup> which involves the same parties and the same issue of the BCDA's exemption from payment of docket fees.<sup>[38]</sup> In the said case, this Court ruled in favor of the BCDA and pronounced it to be exempt from payment of docket fees pursuant to its status as a government instrumentality.<sup>[39]</sup>

### **Arguments of the CIR:**

In its Comment,<sup>[40]</sup> the CIR maintains that the BCDA is not exempt from payment of docket fees based on the Certification dated January 20, 2011.<sup>[41]</sup> Further, it contends that the notice of hearing is mandatory pursuant to Section 5, Rule 15 of the Rules of Court.<sup>[42]</sup> Since the Motion for Reconsideration did not contain a notice of hearing, the same was a mere scrap of paper which did not toll the reglementary period for filing an appeal.<sup>[43]</sup> Thus, the October 10, 2012 Resolution of the CTA *En Banc* already attained finality.<sup>[44]</sup>

## **Issues**

The Petition raises the following issues:

A. THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA'S SECOND DIVISION'S RESOLUTION DENYING DUE COURSE AND DISMISSING BCDA'S PETITION FOR REVIEW FOR NON PAYMENT OF THE PRESCRIBED DOCKET FEES WITHIN THE REGLEMENTARY PERIOD.

B. THE CTA *EN BANC* ERRED IN RULING THAT BCDA IS NOT EXEMPT FROM PAYMENT OF LEGAL FEES.<sup>[45]</sup>

### **Our Ruling**

The Petition is meritorious.

**The BCDA is a government instrumentality and therefore exempt from payment of docket fees.**

The resolution of this case hinges on whether the BCDA is a government instrumentality and consequently exempt from payment of docket fees under Section 22, Rule 131 of the Rules of Court, as amended:

Section. 22. *Government exempt. The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in the rule.* Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees. (Emphasis supplied)

Significantly, this issue has already been resolved in *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*,<sup>[46]</sup> where this Court affirmed BCDA's status as a government instrumentality:

***BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees.***

At the crux of the present petition is the issue of whether or not BCDA is a government instrumentality or a government-owned and - controlled corporation (GOCC). If it is an instrumentality, it is exempt from the payment of docket fees. If it is a GOCC, it is not exempt and as such non-payment thereof would mean that the tax court did not acquire jurisdiction over the case and properly dismissed it for BCDA's failure to settle the fees on time.

BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees required under Section 21, Rule 141 of the Rules of Court, to wit:

**RULE 141  
LEGAL FEES**

SEC. 1. *Payment of fees.* — Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full.

xxx xxx xxx

SEC. 21. *Government exempt.* — **The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule.** Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees. (Emphasis Ours)

Section 2 (10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government "instrumentality" and a "GOCC," to wit:

SEC. 2. *General Terms Defined.* — x x x

(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x

xxx xxx xxx

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis Ours)

The grant of these corporate powers is likewise stated in Section 3 of Republic Act (R.A.) No. 7227, also known as The Bases Conversion and Development Act of 1992 which provides for BCDA's manner of creation, to wit:

*Sec. 3. Creation of the Bases Conversion and Development Authority.* — There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, which shall have the attribute of perpetual succession and **shall be vested with the powers of a corporation.** (Emphasis Ours)

From the foregoing, it is clear that a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes.

In the 2006 case of *Manila International Airport Authority v. CA*, the Court, speaking through Associate Justice Antonio T. Carpio, explained in