

SECOND DIVISION

[G.R. No. 205925, June 20, 2018]

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

D E C I S I O N

REYES, JR., J:

This petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision^[2] dated August 29, 2012 and Resolution^[3] dated February 12, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 797, which affirmed the CTA First Division's dismissal of the case filed by herein petitioner Bases Conversion and Development Authority (BCDA) on the ground that the latter failed to pay docket fees as required under Rule 141 of the Rules of Court.

The Facts

The facts, as summarized by the CTA *En Banc*, read as follows:

On October 8, 2010, BCDA filed a petition for review with the CTA in order to preserve its right to pursue its claim for refund of the Creditable Withholding Tax (CWT) in the amount of Php122,079,442.53, which was paid under protest from March 19, 2008 to October 8, 2008. The CWT which BCDA paid under protest was in connection with its sale of the BCDA-allocated units as its share in the Serendra Project pursuant to the Joint Development Agreement with Ayala Land, Inc.^[4]

The petition for review was filed with a Request for Exemption from the Payment of Filing Fees in the amount of Php1,209,457.90.^[5]

On October 20, 2010, the CTA First Division denied BCDA's Request for Exemption and ordered it to pay the filing fees within five days from notice.^[6]

BCDA moved for reconsideration which was denied by the CTA First Division on February 8, 2011. BCDA was once again ordered to pay the filing fees within five days from notice, otherwise, the petition for review will be dismissed.^[7]

BCDA filed a petition for review with the CTA *En Banc* on February 25, 2011, which petition was returned and not deemed filed without the payment of the correct legal fees. BCDA once again emphasized its position that it is exempt from the payment of such fees.^[8]

On March 28, 2011, the petition before the CTA First Division was dismissed. BCDA attempted to file its Motion for Reconsideration, however, the Officer-In-Charge of the First Division refused to receive the checks for the payment of the filing fees,

and the Motion for Reconsideration. BCDA then filed its Motion for Reconsideration by registered mail.^[9]

Subsequently, BCDA filed a manifestation stating the incidents relating to the tiling of its Motion for Reconsideration. The CTA First Division, on April 26, 2011, issued its Resolution,^[10] the dispositive portion of which states:

WHEREFORE, finding no reason to deny receipt of the supposed Motion for Reconsideration of the [BCDA] on the dismissal of its Petition for Review, the Executive Clerk of Court III of this Division, Atty. Margarette Y. Guzman, is hereby DIRECTED to allow petitioner BCDA to file the same, or to accept said pleading which was allegedly mailed through registered mail, upon receipt thereof, and to commence the procedure in paying the prescribed docket fees, subject to the caveat herein stated, should petitioner BCDA decide to pursue its case.

SO ORDERED.^[11]

On May 17, 2011, BCDA moved for reconsideration of the Resolution dated April 26, 2011 and prayed that it be allowed to pay the prescribed docket fees of Php1,209,457.90 without qualification. On June 9, 2011, the CTA First Division denied both motions for reconsideration.^[12]

On June 28, 2011, BCDA filed a petition for review with the CTA *En Banc* but the same was dismissed. In its assailed Decision^[13] dated August 29, 2012, it adopted and affirmed the findings of the First Division, to wit:

BCDA fails to raise any new and substantial arguments, and no cogent reason exists to warrant a consideration of the Court's Resolution dated March 28, 2011 dismissing its Petition for Review.

It must be emphasized that payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. To repeat, in both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

In this case, due to BCDA's non-payment of the prescribed legal fees within the prescribed period, this Court has not acquired jurisdiction over the case. Consequently, it is as if no appeal was ever filed with this Court.^[14]

Undeterred, BCDA filed a Motion^[15] for Reconsideration but was likewise denied by the CTA *En Banc* in the assailed Resolution^[16] dated February 12, 2013.

Hence, this petition.

The Issues

I.

THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA FIRST DIVISION'S RULING THAT BCDA IS NOT A GOVERNMENT INSTRUMENTALITY, HENCE,

NOT EXEMPT FROM PAYMENT OF LEGAL FEES.

II.

THE CTA *EN BANC* ERRED IN AFFIRMING CTA FIRST DIVISION'S RESOLUTION DISMISSING BCDA'S PETITION FOR REVIEW FOR NON-PAYMENT OF THE PRESCRIBED LEGAL FEES WITHIN THE REGLEMENTARY PERIOD.

Ruling of the Court

The petition is impressed with merit.

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.

x x x x

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 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.

x x x x

(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*,^[17] the Court, speaking through Associate Justice Antonio T. Carpio, explained in this wise:

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.^[18]

Moreover, in the 2007 case of *Philippine Fisheries Development Authority v. CA*,^[19] the Court reiterated that a government instrumentality retains its classification as such albeit having been endowed with some if not all corporate powers. The relevant portion of said decision reads as follows:

Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither is it a non-stock corporation because it has no members.

The Authority is actually a national government instrumentality which is define as an agency of the national government, not integrated within