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Similar to the rules on verification, the rules on forum shopping are designed to promote and facilitate the orderly administration of justice; hence, it should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objectives. The requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that the certification cannot altogether be dispensed with or its requirements completely disregarded. It does not prohibit substantial compliance with the rules under justifiable circumstances, as also in this case.

WHEREFORE, the petition is **GRANTED**. The Resolution dated November 24, 2011 and Resolution dated September 27, 2012 of the Court of Appeals in CA-G.R. CEB SP No. 02691 are **REVERSED** and **SET ASIDE**. The case is **REINSTATED** and **REMANDED** to the Court of Appeals for proper disposition.

SO ORDERED.

Leonardo-de Castro (Chairperson), *del Castillo, Jardeleza*, and *Gesmundo*,[**] *JJ*., concur.

SECOND DIVISION

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

BASES CONVERSION AND DEVELOPMENT AUTHORITY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; LEGAL FEES; GOVERNMENT EXEMPT; BASES CONVERSION AND

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.

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DEVELOPMENT AUTHORITY (BCDA) IS A GOVERNMENT INSTRUMENTALITY 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. lf 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 or Court. x x x [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.

2. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; STOCK CORPORATION; DEFINED AS ONE WHOSE CAPITAL STOCK IS DIVIDED INTO SHARES AND AUTHORIZED TO DISTRIBUTE TO THE HOLDERS OF SUCH SHARES DIVIDENDS; BCDA IS NOT A STOCK CORPORATION, THUS CANNOT QUALIFY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION.—** [I]n order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.'' [I]t is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation. Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury. x x x The National Treasury is not a stockholder of BCDA. Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders.

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3. ID.; ID.; ID.; NON-STOCK CORPORATION; BCDA DOES NOT QUALIFY AS ONE BECAUSE IT IS ORGANIZED FOR A SPECIFIC PURPOSE- TO OWN, HOLD AND/OR ADMINISTER THE MILITARY RESERVATIONS IN THE COUNTRY AND IMPLEMENT ITS CONVERSION TO OTHER PRODUCTIVE USES.— BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code, to wit: **Sec. 88.** *Purposes*.— Non-stock corporations may be formed or organized tor charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof: subject to the special provisions of this Title governing particular classes of non-stock corporations. A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for 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

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[1] *Rollo*, pp. 3-28.

[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas; *id.* at 33-41.

[3] *Id*. at 43-45.

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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]

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[4] *Id*. at 34.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 35.

[8] *Id*.

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On March 28, 2011, the petition before the CTA First Division was dismissed. BCDA attempted to tile 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 filing 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:

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[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 33-41.

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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.

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[14] *Id*. at 39-40.

[15] *Id*. at 138-162.

[16] *Id*. at 43-45.

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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. lf 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 or Court, to wit:

RULE 14
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 x 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.

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x x 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

[17] 528 Phil. 181 (2006).

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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 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. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.[20]

As previously mentioned, in order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3[21] of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x."

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[18] *Id*. at 213.

[19] 555 Phil. 661 (2007).

[20] *Id*. at 669-670.

[21] **Sec. 3.** *Classes of corporations*. — Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations.

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Section 6 of R.A. No. 7227 provides for BCDA's capitalization, to wit:

> Sec. 6. *Capitalization*. — The Conversion Authority shall have an authorized capital of One hundred billion pesos (₱100,000,000,000.00) which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act or by transferring to the Conversion Authority properties valued in such amount.
>
> An initial operating capital in the amount of seventy million pesos (₱70,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated which shall be covered by preferred shares of the Conversion Authority retireable within two (2) years.

Based on the foregoing, it is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation.

Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury, to wit:

> **Sec. 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 (Nicholas) Air Base x x x.
>
> x x 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

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for conversion shall be approved by the President in accordance with paragraph (b), Sec. 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:**

(1) Thirty-two and five-tenths percent (35.5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;

(2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and subic military reservations and their extentions;

(3) Five Percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein: and

(4) **The balance shall accrue and be remitted to the National Treasury** to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people. (Emphasis Ours)

The remaining balance, if any, from the proceeds of BCDA's activities shall be remitted to the National Treasury. The National Treasury is not a stockholder of BCDA. Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders.

BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code, to wit:

Sec. 88. *Purposes*. — Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural,

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fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations.

A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses, to wit:

Sec. 4. *Purposes of the Conversion Authority.* — The Conversion Authority shall have the following purposes:

(a) **To own, hold and/or administer the military reservations** of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station. Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President:

(b) **To adopt, prepare and implement a comprehensive and detailed development plan** embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan **for the sound and balanced conversion of the Clark and Subic military reservations and their extensions** consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;

(c) **To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses**;

(d) **To serve as the holding company of subsidiary companies** created pursuant to Section 16 of this Act and to invest in Special Economic Zones declared under Sections 12 and 15 of this Act;

(e) **To manage and operate through private sector companies developmental projects** outside the jurisdiction of subsidiary companies and Special Economic Zones declared by presidential proclamations and established under this Act;

(f) **To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions** where such plans, programs and/or project development are part of the conversion

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of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

(g) **To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions** as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units. (Emphases Ours)

From the foregoing, it is clear that BCDA is neither a stock nor a non-stock corporation. BCDA is a government instrumentality vested with corporate powers. Under Section 21,[22] Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.

WHEREFORE, premises considered, the present petition is **GRANTED**. The Decision dated August 29, 2012 and Resolution dated February 12, 2013 of the CTA *En Banc* are hereby **REVERSED** and **SET ASIDE**.

Let this case be remanded to the Court of Tax Appeals for further proceedings regarding Bases Conversion and Development Authority's claim for refund of the Creditable Withholding Tax (CWT) in the amount of ₱122,079,442.53 which the latter paid under protest from March 19, 2008 to October 8, 2008.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.,* concur.

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[22] **SEC. 21.** *Government exempt*. — The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying 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.