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THIRD DIVISION

[G.R. No. 192398. September 29, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; DOCUMENTARY STAMP TAX; IMPOSED ON THE TRANSFER OF REALTY BY WAY OF SALE ONLY AND DOES NOT APPLY TO ALL CONVEYANCES OF REAL PROPERTY.— As can be gleaned from under Section 196 of the Tax Code, documentary stamp tax is imposed on all conveyances, deeds, instruments or writings whereby land or realty sold shall be conveyed to the purchaser or purchasers. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. Here, we 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. 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

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the manner of transfer are subject to documentary stamp tax under Section 196.

2. STATUTORY CONSTRUCTION; STATUTES; THE MEANING OF THE STATUTE SHOULD NOT BE CONSTRUED ON THE BASIS OF ONE PART ONLY, BUT EACH PART OR SECTION SHOULD BE CONSTRUED IN CONNECTION WITH EVERY OTHER PART OR SECTION SO AS TO PRODUCE A HARMONIOUS WHOLE.— It is not proper to construe the meaning of a statute on the basis of one part. As we have previously explained, A statute is passed as a whole and not in parts or sections, and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. It is not proper to confine its intention to the one section construed. *It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from the context, some particular meaning to be attached to any word or phrase usually to be ascertained from the context.*

3. TAXATION; DOCUMENTARY STAMP TAX; THE TRANSFER OF REAL PROPERTIES TO THE SURVIVING CORPORATION IN PURSUANCE OF A MERGER IS NOT SUBJECT TO DOCUMENTARY STAMP TAX AS 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.— 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

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personality and respondent PSPC stepped into everything that was SPPC's, pursuant to the law and the terms of their Plan of Merger. x x x. 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.

4. ID.; ID.; NATURE THEREOF.— [I]t should be noted that a documentary stamp tax is in the nature of an excise tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, or transfer of an obligation, right or property incident thereto. Documentary stamp tax is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. Based on the foregoing, the transfer of real properties from SPPC to respondent is not subject to documentary stamp tax considering that the same was not conveyed to or vested in respondent by means of any specific deed, instrument or writing. There was no deed of assignment and transfer separately executed by the parties for the conveyance of the real properties. The conveyance of real properties not being embodied in a separate instrument but is incorporated in the merger plan, thus, respondent is not liable to pay documentary stamp tax.

5. ID.; ID.; AN ACT RATIONALIZING THE PROVISIONS OF THE DOCUMENTARY STAMP TAX (RA 9243); EXEMPTS THE TRANSFER OF REAL PROPERTIES AS A CONSEQUENCE OF MERGER OR CONSOLIDATION FROM THE PAYMENT OF DOCUMENTARY STAMP

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TAX; REFUND OF ERRONEOUSLY PAID DOCUMENTARY STAMP TAX, AFFIRMED.— RA 9243, entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997" was enacted and took effect on April 27, 2004 which exempts the transfer of real property of a corporation, which is a party to the merger or consolidation, to another corporation, which is also a party to the merger or consolidation, from the payment of documentary stamp tax. Section 9 of the law which amends Section 199 of the NIRC states, x x x. Section 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 **(m) Transfer of property pursuant to Section 40 (C)(2) of the National Internal Revenue Code of 1997, as amended**. 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 documentary stamp tax. Thus, we find no error on the part of the CA in affirming the Decision of the CTA which ruled that respondent is entitled to a refund or issuance of a tax credit certificate in the amount of ₱22,101,407.64 representing respondent's erroneously paid documentary stamp tax on the transfer of real property from SPPC to respondent.

6. ID.; COURT OF TAX APPEALS; THE COURT WILL NOT SET ASIDE THE CONCLUSION REACHED BY THE COURT OF TAX APPEALS, ESPECIALLY IF AFFIRMED BY THE COURT OF APPEALS, UNLESS THERE HAS BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY.— We reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the CA. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part which is not present here.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Baniqued & Baniqued for respondent.

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D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Commissioner of Internal Revenue, who seeks to nullify and set aside the September 10, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 77117. The CA had affirmed the Decision[2] of the Court of Tax Appeals ordering petitioner to refund, or in the alternative, issue a tax credit certificate in favor of Pilipinas Shell Petroleum Corporation (respondent) in the amount of ₱22,101,407.64 representing the latter's erroneously paid documentary stamp tax for the taxable year 2000. Petitioner likewise assails the CA Resolution[3] denying petitioner's motion for reconsideration.

The antecedent facts:

Petitioner is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office located at Agham Road, Diliman, Quezon City.

Respondent Pilipinas Shell Petroleum Corporation (PSPC) is a corporation organized and existing under the laws of the Philippines and was incorporated to construct, operate and maintain petroleum refineries, works, plant machinery, equipment dock and harbor facilities and auxiliary works and other facilities of all kinds and used in or in connection with the manufacture of products of all kinds which are wholly or partly derived from crude oil.

On April 27, 1999, respondent entered into a Plan of Merger with its affiliate, Shell Philippine Petroleum Corporation (SPPC),

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[1] *Rollo*, pp. 32-A to 42. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Josefina Guevara-Salonga and Celia C. Librea-Leagogo concurring.

[2] CA *rollo*, pp. 30-43. The decision was rendered on April 30, 2003 in C.T.A. Case No. 6477.

[3] *Supra* note 1, at 44-45. The Resolution is dated April 13, 2010.

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a corporation organized and existing under the laws of the Philippines. In the Plan of Merger, it was provided that the entire assets and liabilities of SPPC will be transferred to, and absorbed by, respondent as the surviving entity. The Securities and Exchange Commission approved the merger on July 1, 1999.

On August 10, 1999, respondent paid to the BIR documentary stamp taxes amounting to ₱524,316.00 on the original issuance of shares of stock of respondent issued in exchange for the surrendered SPPC shares pursuant to Section 175 of the National Internal Revenue Code of 1997 (NIRC or Tax Code).

Confirming the tax-free nature of the merger between respondent and SPPC, the BIR, in a ruling[4] dated October 4, 1999, ruled that pursuant to Section 40 (C)(2) and (6)(b) of the NIRC, no gain or loss shall be recognized, if, in pursuance to a plan of merger or consolidation, a shareholder exchanges stock in a corporation which is a party to the merger or consolidation solely for the stock of another corporation which is also a party to the merger or consolidation.

The BIR ruled, among others, that no gain or loss shall be recognized by the stockholders of SPPC on the exchange of their shares of stock of SPPC solely for shares of stock of respondent pursuant to the Plan of Merger.

The BIR, however, stated in said Ruling that

> 3. The issuance by PSPC of its own shares of stock to the shareholders of SPPC in exchange for the surrendered certificates of stock of SPPC shall be subject to the documentary stamp tax (DST) at the rate of Two Pesos (₱2.00) on each Two Hundred Pesos (₱200.00), or fractional part thereof, based on the total par value of the PSPC shares of stock issued pursuant to Section 175 of the Tax Code of 1997.
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> x x x x x x x x x
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> 6. The exchange of land and improvements by SPPC to PSPC for the latter's shares of stock shall be subject to documentary stamp tax imposed under Section 196 of the Tax Code of 1997, based

[4] *Supra* note 2, at 212-217.

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> on the consideration contracted to be paid for such realty or its fair market value determined in accordance with Section 6(E) of the said Code, whichever is higher. x x x[5]

On May 10, 2000, respondent paid to the BIR the amount of ₱22,101,407.64 representing documentary stamp tax on the transfer of real property from SPPC to respondent.

Believing that it erroneously paid documentary stamp tax on its absorption of real property owned by SPPC, respondent filed with petitioner on September 18, 2000, a formal claim for refund or tax credit of the documentary stamp tax in the amount of ₱22,101,407.64.

There being no action by petitioner, respondent filed on May 8, 2002, a petition[6] for review with the Court of Tax Appeals (CTA) in order to suspend the running of the two-year prescriptive period.

Petitioner filed an Answer[7] on June 11, 2002 praying that the petition for review be dismissed for lack of merit. Petitioner asserted that in tax-deferred exchanges, documentary stamp tax is imposed. Petitioner cited BIR Ruling No. 2-2001[8] dated February 2, 2001 which states:

> In view of all the foregoing, it is the opinion of this Office, as we hereby hold, that the tax-deferred exchange of properties of a corporation, which is a party to a merger or consolidation, solely for shares of stock in a corporation, which is also a party to the merger or consolidation, is subject to the documentary stamp tax under Section 176 if the properties to be transferred are shares of stock or even certificates of obligations, and also to the documentary stamp tax under Sec[tion] 196, if the properties to be transferred are real properties. Finally, it may be worth mentioning that the original issuance of shares of stock of the surviving corporation in favor of the stockholders of the absorbed corporation as a result of the merger,

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[5] *Id*. at 215.

[6] Records, pp. 1-29.

[7] *Id*. at 75-79.

[8] *Rollo*, pp. 89-92.

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is subject to the documentary stamp tax under Sec[tion] 175 of the Tax Code of 1997. (BIR Ruling No. S-40-220-2000, December 21, 2000).[9]

In its Decision[10] promulgated on April 30, 2003, the CTA granted respondent's prayer for tax refund or credit.

The CTA held that

> Based on the foregoing, it is evident that the transfer of real property from the absorbed corporation to the surviving or consolidated corporation pursuant to a merger or consolidation **occurs by operation of law** inasmuch as the real property is deemed transferred **without further act or deed**. In the case at bar, the petitioner's theory is that DST on the transfer of real property does not apply to a "statutory merger" where real property of the absorbed corporation is deemed automatically vested in the surviving corporation by operation of law, *i.e.*, without any further act of deed.
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> x x x x x x x x x
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> To reiterate, since the transfer of real property of SPPC to petitioner was not effected by or dependent on any voluntary act or deed of the parties to the merger, DST, therefore, should not attach to the same.
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> x x x x x x x x x
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> A perusal of the above-cited provision would reveal that the DST is imposed only on all conveyances, deeds, instruments, or writings where realty sold shall be conveyed to purchaser or purchasers. Clearly, in case of merger, as in the case at bar, only by straining the imagination can the transferee be said to have "bought" or "purchased" real property from the transferor. The absorption by petitioner of real property of SPPC as an inherent legal consequence of the merger is not a sale or other conveyance of real property for a consideration in money or money's worth.
>
> As correctly pointed out by the petitioner, SPPC's real property was not conveyed to or vested in petitioner by means of any deed, instrument or writing, considering that real properties were automatically vested in petitioner without "further act or deed". There was a complete absence of any formal instrument or writing upon

[9] *Id.* at 92.

[10] *Supra* note 2.

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which DST may be imposed. Nor can the realty be said to have been "sold" or vested in a "purchaser or purchasers" within the ordinary meanings of those terms.

x x x x x x x x x

Moreover, under Revenue Memorandum Circular No. 44-86 dated December 4, 1986, which outlines the procedure in the determination and collection of stamp tax on instruments of sale or conveyance of real property, it is clear that the DST applies only if the instrument is a sale or other conveyance of real property for a consideration in money or money's worth.

Finally, the absorption by petitioner of real property of SPPC by operation of law pursuant to the merger is part and parcel of a single and continuing transaction. Accordingly, the same should not be subject to DST as if it constituted a separate and distinct transaction.

As earlier stated, DST is in the nature of an excise tax because it is really imposed on the privilege to enter into a transaction. Its imposition, therefore, should be only once. And in a statutory merger, there is only one transaction, *i.e.*, the issuance by the surviving corporation of its own shares of stock to the stockholders of the absorbed corporation in exchange for the shares surrendered by the shareholders of the absorbed corporation. All other transactions which are an integral and inherent part of the merger, such as the absorption of real property, should no longer be subject to another round of DST. In other words, all the integral parts of the merger (*e.g.*, surrender of shares in exchange for shares, transfer of assets, assumption of liabilities, etc.) should be treated as a single and continuing transaction subject only to one DST. The transfer of real property is not a transaction separate and distinct from the merger but an integral part or a mere continuation of the initial transaction which was previously consummated.

Applying the same in petitioner's case, the absorption by petitioner of real property of SPPC is not a transaction separate and distinct from the merger, wherein petitioner issued its own shares to SPPC shareholders in exchange for the latter's shares in SPPC, the absorbed entity, but a mere continuation of the initial transaction which was previously consummated, and for which the required DST was already paid.[11]

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[11] *Id.* at 35-42.

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On June 4, 2003, petitioner filed a petition for review with the CA.

In the herein assailed Decision dated September 10, 2009, the CA dismissed the petition and affirmed the Decision of the CTA. The appellate court held that the transfer of the properties of SPPC to respondent was not in exchange for the latter's shares of stock but is a legal consequence of the merger. The CA ruled that the actual transfer of SPPC's real properties to respondent was not effected by or dependent upon any voluntary deed, conveyance or assignment but occurred by operation of law. The CA held that since the basis of the BIR in imposing the documentary stamp tax is not applicable to a transfer of real property by operation of law, PSPC erroneously paid the documentary stamp tax and is therefore, entitled to a tax refund or tax credit.

Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated April 13, 2010.

Hence, petitioner filed the present petition on the sole ground that

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRANSFER OF REAL PROPERTIES OF SPPC TO RESPONDENT IN EXCHANGE FOR THE LATTER'S SHARES OF STOCK IS NOT SUBJECT TO THE DST IMPOSED UNDER SECTION 196 OF THE TAX CODE.[12]

Petitioner points out that the merger between SPPC and respondent resulted in the following: (1) the issuance by respondent of its own shares of stock to the shareholders of SPPC in exchange for the surrendered certificates of stock of SPPC and was imposed a documentary stamp tax under Section 175 of the Tax Code in the amount of ₱524,316.00; and (2) the transfer of SPPC's real properties to respondent in exchange for the latter's shares of stock which was imposed a documentary stamp tax under Section 196 of the Tax Code in the amount of ₱22,101,407.64.

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[12] *Rollo*, p. 17.

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Respondent claims that the documentary stamp tax imposed on the second transaction had been erroneously paid and seeks to claim a refund or tax credit in the amount of ₱22,101,407.64. Both the CTA and the CA held that respondent is entitled to refund or tax credit.

Petitioner insists that the transfer of SPPC's real properties to respondent in exchange for the latter's shares of stock is subject to documentary stamp tax. Petitioner contends that Section 196 of the Tax Code covers all transfers of real property for a valuable consideration and does not only refer to sale of realty since it speaks of real property being "granted, assigned, transferred or otherwise conveyed."

Petitioner also claims that the subject transfer was not entirely by operation of law since the merger agreement between respondent and SPPC involves the voluntary act of the parties. Petitioner avers that it is wrong to say that no documentary stamp tax is imposable allegedly because the transfer to respondent of SPPC's real properties was not effected by means of any deed, instrument or writing. Petitioner contends that Section 196 of the Tax Code does not require that a particular document be executed for the transfer of real property in order to be subject to documentary stamp tax. Petitioner adds that it is enough that a conveyance of real property has been effected since documentary stamp tax is imposed not on the document alone but on the transaction. Petitioner avers that the merger between SPPC and respondent, while constituting a single transaction, gave rise to several tax incidents which, for tax purposes, should be treated individually and apart from the merger as a whole.

Lastly, petitioner argues that the enactment of Republic Act No. 9243[13] (RA 9243) which specifically exempts the transfers of real property in merger or consolidation from documentary stamp tax only supports further the conclusion that prior to RA 9243, such transfers are subject to documentary stamp tax.

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[13] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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Otherwise, there would have been no reason to specifically exempt such transfers from documentary stamp taxes.

Respondent in its Comment[14] primarily submits that the decision sought to be reviewed is already final and executory and the petition is filed out of time.

Respondent asserts that it is a rule of statutory construction that a statute's clauses and phrases should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts. Respondent claims that petitioner's interpretation that a mere grant, assignment, transfer or conveyance of real property is subject to documentary stamp tax under Section 196 is erroneous since petitioner disregarded the qualifying word "sold" which describes the kind of transfer that is contemplated as subject to documentary stamp tax. Respondent also points out that the fact that Section 196 refers to the words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are contemplated. That contrary to petitioner's claim, documentary stamp tax is not levied on the privilege to convey real properties regardless of the manner of conveyance.

Respondent emphasizes that the transaction between respondent and SPPC was not one whereby SPPC transferred its real properties to respondent in exchange for the latter's shares of stock. SPPC and respondent did not enter into some Deed of Assignment or a Deed of Exchange whereby SPPC assigned or conveyed its real properties to respondent either for cash or in exchange for some property like shares of stock. Rather, the transaction that SPPC and respondent entered into was a merger and the transfer of the real properties of SPPC to respondent was merely a legal consequence of the merger of SPPC with respondent. Respondent, therefore, posits that since the absorption by respondent of SPPC's real properties as a consequence of the merger is without consideration in money or money's worth, the same is not subject to documentary stamp

[14] *Rollo*, pp. 99-122.

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tax. Furthermore, respondent maintains that in a statutory merger or consolidation, real property of the absorbed corporation is transferred to and automatically vested in the surviving corporation purely and strictly by operation of law and not by voluntary act of the parties to the merger.

The issues presented for our resolution are as follows: (1) whether the transfer of SPPC's real properties to respondent is subject to documentary stamp tax under Section 196 of the Tax Code; and (2) whether respondent is entitled to the refund/tax credit in the amount of ₱22,101,407.64 representing documentary stamp tax paid for the taxable year 2000 in connection with the transfer of real properties from SPPC to respondent.

Prefatorily, we first address respondent's contention that the petition for review on *certiorari* was filed late.

Records show that on September 10, 2009, the CA issued the assailed decision. Petitioner filed a motion for reconsideration but the motion was denied by the CA in a Resolution dated April 13, 2010. Petitioner received notice of the Resolution on April 29, 2010 and thus had 15 days from that date or until May 14, 2010 to file its petition for review on *certiorari*. On June 3, 2010, the Office of the Solicitor General (OSG), representing petitioner, filed a manifestation and motion (*ad cautelam*) requesting for an extension of time within which to file a petition for review on *certiorari*. The OSG averred that petitioner forwarded the case to the OSG for representation; however, the records of the case, due to inadvertence and without fault of the handling lawyer, were forwarded to him only on May 26, 2010. Hence, it was impossible for him to file the petition or a motion for extension on May 14, 2010. Thereafter, the OSG filed a motion for extension dated June 10, 2010 requesting for a second extension of time to file its petition. Petitioner filed the present petition for review on *certiorari* on July 9, 2010.

In a Resolution[15] dated July 26, 2010, this Court granted *pro hac vice* petitioner's first and second motions for extension

[15] *Rollo*, pp. 93-94.

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totalling 45 days from May 26, 2010. Hence, petitioner had until July 10, 2010 to file its petition for review on *certiorari*. Since the present petition was filed on July 9, 2010, it was filed within the 45-day extension period granted to petitioner.

We now proceed to the primordial issue of whether the transfer of SPPC's real properties to respondent is subject to documentary stamp tax under Section 196 of the Tax Code. The pertinent provision states, to wit:

> SEC. 196. Stamp Tax on Deeds of Sale and Conveyance 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. (Emphasis and underscoring ours.)

As can be gleaned from the aforequoted provision, documentary stamp tax is imposed on all conveyances, deeds, instruments or writings whereby land or realty sold shall be conveyed to the purchaser or purchasers.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[16] The law must not be read in truncated parts, its provisions must be read in relation to the whole law.[17] The particular words, clauses and phrases should not be studied

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[16] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461, 469.

[17] *Id.*

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as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[18]

Here, we 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.

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. As we have previously explained,

> A statute is passed as a whole and not in parts or sections, and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. It is not proper to confine its intention to the one section construed. *It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from the context, some particular meaning to be attached to any word or phrase usually to be ascertained from the context.*[19]

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[18] *The Public Schools District Supervisors Association v. Hon. De Jesus*, 524 Phil. 366, 396 (2006).

[19] *Sajonas v. Court of Appeals*, 327 Phil. 689, 710 (1996).

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We quote with approval the following statements of the appellate court in the assailed decision,

> Section 196 should be read as a whole and not phrase by phrase. The phrase *granted, assigned, transferred or otherwise conveyed* clearly refers to the phrase *whereby any land, tenement or other realty is sold*. This clearly shows that the legislature intended Section 196 to refer to a transfer of realty by virtue of sale. This is further bolstered by the fact that the property is *granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers*. In addition, the basis of the stamp tax is the consideration agreed upon by the parties or the property's fair market value. Taking all of these into consideration, it is beyond doubt that … Section 196 pertains to a transfer of realty by way of sale.[20]

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.[21] 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.[22] 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.

Pertinently, a merger of two corporations produces the following effects, among others:

> Sec. 80. *Effects of merger or consolidation*. – x x x
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> x x x x x x x x x

[20] *Rollo*, p. 37.

[21] *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, October 13, 2010, 633 SCRA 94, 104.

[22] *Mindanao Savings and Loan Association, Inc. v. Willkom*, G.R. No. 178618, October 20, 2010, 634 SCRA 291, 299.

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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**;…[23] (Emphasis supplied.)

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.

In fact, as properly cited in the CTA Decision, Section 185 of Revenue Regulations No. 26, otherwise known as the documentary stamp tax regulations, provides:

> Section 185. Conveyances without consideration. – Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable.

Furthermore, it should be noted that a documentary stamp tax is in the nature of an excise tax because it is imposed upon

[23] CORPORATION CODE, Section 80.

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the privilege, opportunity or facility offered at exchanges for the transaction of the business.[24] Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, or transfer of an obligation, right or property incident thereto.[25] Documentary stamp tax is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto.[26] Based on the foregoing, the transfer of real properties from SPPC to respondent is not subject to documentary stamp tax considering that the same was not conveyed to or vested in respondent by means of any specific deed, instrument or writing. There was no deed of assignment and transfer separately executed by the parties for the conveyance of the real properties. The conveyance of real properties not being embodied in a separate instrument but is incorporated in the merger plan, thus, respondent is not liable to pay documentary stamp tax.

Notably, RA 9243, entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997" was enacted and took effect on April 27, 2004 which exempts the transfer of real property of a corporation, which is a party to the merger or consolidation, to another corporation, which is also a party to the merger or consolidation, from the payment of documentary stamp tax.

Section 9 of the law which amends Section 199 of the NIRC states,

> SECTION 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> Section 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:

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[24] *Commissioner of Internal Revenue v. Manila Bankers' Life Insurance Corporation*, G.R. No. 169103, March 16, 2011, 645 SCRA 500, 509.

[25] *Id.*

[26] *Id.* at 510.

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x x x x x x x x x

(m) Transfer of property pursuant to Section 40 (C)(2)[27] **of the National Internal Revenue Code of 1997, as amended**. (Emphasis supplied.)

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 documentary stamp tax.

Thus, we find no error on the part of the CA in affirming the Decision of the CTA which ruled that respondent is entitled to a refund or issuance of a tax credit certificate in the amount of ₱22,101,407.64 representing respondent's erroneously paid documentary stamp tax on the transfer of real property from SPPC to respondent.

We reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the CTA, especially if

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[27] SEC. 40. **Determination of Amount and Recognition of Gain or Loss**. –

x x x x x x x x x

(C) *Exchange of Property*. –

x x x x x x 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 the 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 another 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.

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affirmed by the CA. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part which is not present here.[28]

WHEREFORE, we **DENY** the petition for lack of merit. The Decision dated September 10, 2009 and Resolution dated April 13, 2010 of the Court of Appeals in CA-G.R. SP No. 77117 are hereby **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192957. September 29, 2014]

EMMANUEL B. MORAN, JR., (Deceased), substituted by his widow, CONCORDIA V. MORAN, *petitioner, vs.* **OFFICE OF THE PRESIDENT OF THE PHILIPPINES, AS REPRESENTED BY THE HONORABLE EXECUTIVE SECRETARY EDUARDO R. ERMITA and PGA CARS, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSUMER ACT (RA 7394), ARTICLE 166 THEREOF; DECISIONS

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[28] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, 531 Phil. 264, 269 (2006).