REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LUZVIMINDA LAND HOLDINGS, INC.,
Petitioner,

CTA CASE No. 10035

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 03 2020
3:20 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Luzviminda Land Holdings, Inc. (**petitioner/LLHI**), seeking the refund or issuance

---

[1] Pursuant to Section 3(a)(2) of Rule 4 on Jurisdiction of the Court of the *2005 Revised Rules of the Court of Tax Appeals, as amended.*

...

Section 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action...*Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for

of tax credit certificate (**TCC**) of alleged erroneously paid or illegally collected withholding tax (**WT**) and documentary stamp tax (**DST**); including surcharges, interests and penalties amounting to ₱26,411,464.00 and ₱6,640,366.00, respectively, or a total of ₱33,051,830.00, arising from the transfer of a parcel of land from Marangal Properties, Inc. (**MPI**) to petitioner by virtue of a merger transaction.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, primarily engaged in the lease of real estate properties. It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 005-283-488-000.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of the said office; including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law.[3]

FACTS OF THE CASE

In a meeting held on 18 December 2008, the Board of Directors and Stockholders of petitioner and MPI approved the Articles and Plan of Merger of the two corporations with the former as the surviving corporation.

Prior to the merger, petitioner owned 60% of MPI's outstanding capital stock, while Coca-Cola Bottlers Philippines, Inc. (now Coca-Cola Beverages Philippines, Inc.) [**CCBPI**] held the remaining 40%.

On 27 May 2009, the Securities and Exchange Commission (**SEC**) issued a Certificate of Filing of the Articles and Plan of Merger[4], approving the merger of the two corporations.[5]

---

review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis supplied)

...

2 Paragraph 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 224.
3 Paragraph 2, id.
4 Exhibit "P-3", id., p. 273.
5 Paragraph 4, JSFI, id., p. 224.

In exchange for MPI's net assets, petitioner issued 1,092,708 common shares to CCBPI valued at ₱39,337,447.00, corresponding to the latter's 40% share in MPI.[6]

The terms of the merger between petitioner and MPI provide that all assets, rights, privileges, immunities, franchises and all and every interest of, or belonging to, or due to the latter as of 31 December 2008 (cut-off date), shall be taken and deemed transferred to petitioner.

Pursuant to the merger, petitioner and MPI later executed a Deed of Transfer for each property transferred for purposes of registering the transfer of title of MPI's properties. One of the properties transferred to petitioner is a parcel of land located in Ipil Road, Dasmariñas Village, Makati City (**Ipil Property**).

On 17 December 2009, petitioner filed a request for ruling on the tax-exempt status of the merger pursuant to Section 40(C)(2)[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[8]

Upon follow up with the BIR sometime in 2016, petitioner was informed that the docket for the request for ruling was missing. Petitioner then submitted anew all its documents to the BIR – Law & Legislative Division on 17 October 2016. However, no ruling confirming the exempt-status of the merger was issued.

Meanwhile, petitioner agreed to sell the Ipil Property to IPILRD Marketing, Inc. (**IPILRD**), a corporation organized and existing under the laws of the Philippines. Petitioner and IPILRD then executed a Deed of Absolute Sale on 01 July 2016 (to consummate the sale).[9]

---

[6] Paragraph 5, id.

[7] **Sec. 40.** *Determination of Amount and Recognition of Gain or Loss.* –

...

(C) *Exchange of Property.* –

...

(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[.]

...

[8] Paragraph 7, JSFI, Division Docket, p. 224.

[9] Paragraph 9, id., pp. 224-225.

Later, while petitioner was in the process of securing a Certificate Authorizing Registration (**CAR**) for the transfer of the Ipil Property to IPILRD, it was informed that it should first pay the WT and DST amounting to ₱26,411,464.00 and ₱6,640,366.00, respectively, inclusive of surcharges, interests and penalties. Considering that no ruling was issued on the tax-exempt status of the merger between petitioner and MPI, and following the advice of Revenue District Officer Rosita U. Meniano (**RDO Meniano**), petitioner paid the aforesaid amounts on 27 February 2017.

On 21 May 2018, petitioner filed an administrative claim for refund or issuance of a TCC of the erroneously paid or illegally collected WT and DST arising from the transfer of Ipil Property from MPI to petitioner.

PROCEEDINGS BEFORE THE COURT

Without any decision on its claim for refund or issuance of a TCC, petitioner filed before this Court its Petition for Review on 26 February 2019.

On 22 April 2019, respondent filed his Answer (with Special and Affirmative Defenses).[10] Thereafter, a Notice of Pre-Trial Conference[11] was issued setting the case for Pre-Trial Conference. The parties subsequently filed their respective Pre-Trial Briefs.[12]

During the Pre-Trial Conference, the Court gave the parties fifteen (15) days to file their Joint Stipulation of Facts and Issues (**JSFI**). Accordingly, the parties filed their JSFI[13] on 19 June 2019, which the Court approved and adopted in the Pre-Trial Order[14] dated 03 July 2019. The pre-trial was thereafter terminated accordingly.

---

[10] Id., pp. 100-104.
[11] Id., pp. 106-107.
[12] Petitioner and respondent filed their respective Pre-Trial Briefs on 20 May 2019, id., pp. 200-208 and 209-215.
[13] Id., pp. 223-226.
[14] Id., pp. 232-235.

In the subsequent trial proper, petitioner presented its witnesses, namely: (1) Mary Ann Torres[15] (**Torres**), Tax Executive of CCBPI; (2) Atty. Christine F. Bio[16] (**Atty. Bio**), its Corporate Secretary; and, (3) Atty. Carlito P. Egaña[17] (**Atty. Egaña**), Partner at A.M. Sison, Jr. & Partners Law Office, who all executed their judicial affidavits in lieu of their direct testimony.

Torres, as CCBPI's Tax Executive, handles the tax compliance of CCBPI and all its subsidiaries and affiliates, including petitioner as one of its affiliates.

Torres testified as to the circumstances pertinent to the transfer of the Ipil Property, first from MPI to petitioner by virtue of the merger and evidenced by a Deed of Transfer dated 01 July 2009; and, second, the petitioner's eventual sale of the subject property to IPILRD as evidenced by a Deed of Absolute Sale dated 1 July 2016. Likewise, she affirmed the payment of WT and DST (arising from the first transfer from MPI to petitioner) to facilitate the release of the CAR, one of the requisites to effect the transfer of property from petitioner to IPILRD.

During cross-examination[18], Torres confirmed that she personally applied for the CAR with the BIR.

Atty. Bio, on the other hand, as petitioner's Corporate Secretary, detailed the merger between MPI and petitioner. Particularly, the ownership composition prior to and after the merger and the issuance of shares to CCBPI in exchange for the latter's 40% holdings in MPI's net assets.

On cross-examination[19], Atty. Bio was asked about MPI's stockholders, to which she responded that petitioner owned 60% of the stock shares and CCBPI owned the rest or 40%.

15 Judicial Affidavit, Exhibit "P-22", id., pp. 130-135.
16 Judicial Affidavit, Exhibit "P-23", id., pp. 114-117.
17 Judicial Affidavit, Exhibit "P-24", id., pp. 175-179.
18 TSN dated 15 July 2019.
19 TSN dated 07 August 2019.

Atty. Egaña, petitioner's last witness, is one of the partners of A.M. Sison Jr. & Partners Law Office who handled petitioner's application and sought for a BIR tax-exempt ruling relative to the merger and the subsequent claim for refund or issuance of a TCC corresponding to petitioner's WT and DST.

During the cross examination[20], respondent inquired as to the reason why petitioner filed an application for ruling on the tax-exempt status of the merger. Atty. Egaña explained that it was one of the requirements to effect the transfer of title and registration in petitioner's name, as surviving corporation, the properties of MPI (absorbed corporation).

Further into the cross-examination, Atty. Egaña also explained that, in one case, the CTA *En Banc* ruled that a prior BIR ruling is not a condition precedent in availing the tax exemption privilege of a taxpayer.

On re-direct examination, Atty. Egaña stated that there is no provision in the NIRC of 1997, as amended, requiring a ruling before a merger can be considered as tax exempt.

After the presentation of its last witness, petitioner filed its Formal Offer of Evidence[21] (**FOE**) on 13 August 2019. In the 23 September 2019 Resolution[22], the Court admitted all of petitioner's exhibits.

Still later, respondent manifested that he will no longer present evidence.[23]

Subsequently, petitioner filed its Memorandum[24] on 25 October 2019, whereas respondent filed his Memorandum[25] on 25 November

---

20 Id.
21 Division Docket, pp. 257-263.
22 Id., pp. 367-368.
23 Minutes of the Hearing dated 07 August 2019, id., p. 251.
24 Id., pp. 353-365.
25 Id., pp. 380-393.

2019. The Court then submitted the case for decision on 06 December 2019.[26]

ISSUES

Per the parties JSFI[27], the Court shall resolve the following issues, to wit:

I.

WHETHER PETITIONER IS ENTITLED TO A REFUND AND/OR TAX CREDIT OF ERRONEOUSLY PAID AND/OR ILLEGALLY COLLECTED WITHHOLDING TAX (WT) AND DOCUMENTARY STAMP TAX (DST) AMOUNTING TO ₱26,411,464.00 AND ₱6,640,366.00, RESPECTIVELY, INCLUSIVE OF SURCHARGE, INTEREST AND PENALTIES.

II.

WHETHER A BUREAU OF INTERNAL REVENUE RULING IS A CONDITION *SINE QUA NON* FOR THE AVAILMENT OF THE NON-RECOGNITION OF GAIN RESULTING FROM A MERGER TRANSACTION UNDER SECTION 40(C)(2) OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

ARGUMENTS

In support of the above issues, petitioner vehemently argues that the merger with MPI falls within the purview of Section 40(C)(2)[28] of the NIRC of 1997, as amended, and thus qualifies as a tax-free merger. It avers that the merger was for a *bona fide* purpose, that is, to promote and accomplish efficiencies and economies which will serve to reduce costs in all aspects of their business.

Pursuant to the merger, the 60% holdings of petitioner in MPI's net assets were closed against its investment account. Petitioner issued common shares for CCBPI's remaining 40%. Accordingly, the transfer of properties, including the Ipil Property, is a tax-free exchange where no gain or loss shall be recognized (thus not subject to withholding tax). In the same vein, the said transfer is not subject to DST pursuant

---

26 Resolution dated 06 December 2019, id., p. 395.
27 Id., p. 225.
28 Supra at note 7.

to Section 199(m)[29] of the NIRC of 1997, as amended. Consequently, considering that Ipil Property's transfer is not subject to WT and DST, petitioner maintains that it is entitled to a refund or issuance of a TCC corresponding to the WT and DST paid on 27 February 2017.

Moreover, citing the previous rulings of the Court of Tax Appeals *En Banc* (**CTA *En Banc***) in *Commissioner of Internal Revenue v. Dakudao & Sons, Incorporated*[30], and the subsequent decisions of the Court affirming said ruling, petitioner contends that a prior BIR ruling is not a precondition for non-recognition of gain resulting from a merger transaction.

Respondent, for his part, counters that the merger between petitioner and MPI cannot be considered as a *bona fide* business transaction since petitioner subsequently sold the Ipil Property. He insists that the merger was an attempt to evade the burden of taxation. This being so, the merger does not qualify as a tax-free merger under Section 40(C)(2) of the NIRC of 1997, as amended. Concomitantly, the transfer of Ipil Property is also subject to DST under Section 196[31] of the NIRC of 1997, as amended.

Likewise, respondent avers that a BIR ruling is a condition *sine qua non* for the non-recognition of gain in a merger transaction. The issuance of the CAR/Tax Clearance will be based on the ruling issued to the effect that the transaction qualifies as a tax-free exchange under Section 40(C)(2) of the NIRC of 1997, as amended.

Additionally, respondent posits that the BIR's certificate of tax clearance is required to be submitted to the SEC before the latter issues a certificate of dissolution or reorganization. Likewise, the cancellation of business registration due to merger/consolidation, among others, requires the filing of a notice of closure or cessation of business in the Revenue District Office where the taxpayer is

29 **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 documentary stamp tax:

...

(m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended.

...

30 CTA EB No. 1150. 12 May 2015.

31 **Sec. 196.** *Stamp Tax on Deeds of Sale and Conveyances of Real Property.*

registered. He emphasizes that petitioner and MPI were able to secure a Certificate of Filing of the Articles and Plan of Merger with the SEC despite the absence of a tax clearance from the BIR.

Lastly, respondent avers that petitioner has the burden to prove that it has complied with Section 204, in relation to Section 229 of the NIRC, as amended, including, among others, the timely filing of the administrative and judicial claims for refund. Petitioner's failure to do so is fatal to its claim and the same has a direct bearing on this Court's exercise of its jurisdiction.

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, it is propitious to first tackle any raised issue on the Court's exercise of its jurisdiction over the present case.

A. THE COURT HAS JURISDICTION

Petitioner anchors its claim for refund or issuance of a TCC on Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended. Section 204 (C) and Section 229 read in part:

> ...
>
> **Sec. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – ...
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority... **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.
>
> ...
>
> **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, or 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 not 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 payment appears clearly to have been erroneously paid.[32]

...

Concomitantly, Section 3(a)(2) of Rule 4 on Jurisdiction of the Revised Rules of the Court of Tax Appeals (**RRCTA**) provides:

...

Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action...*Provided, still further,* that in the case of **claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**[.][33]

...

Petitioner paid the WT and DST subject of its claim for refund on 27 February 2017. A year later, or on 21 May 2018, it filed its

---

32 Emphasis supplied.
33 Emphasis supplied.

administrative claim for refund before respondent. Respondent, however, did not act on petitioner's claim.

As the two-year period was about to lapse, petitioner filed the instant Petition for Review before this Court on 26 February 2019.

In claims for refund under Section 229 of the NIRC of 1997, as amended, it is pivotal that both the administrative and judicial claims be filed within the two-year period reckoned from date of payment, regardless of any supervening cause. With the Petition for Review having been seasonably filed, the Court clearly has jurisdiction over the instant case.

We shall now proceed to determine whether petitioner is entitled to the relief sought.

B. THE MERGER QUALIFIES UNDER SECTION 40(C)(2) OF THE NIRC OF 1997, AS AMENDED

The crux of the controversy herein is whether the merger between petitioner and MPI qualifies as tax-free under Section 40(C)(2) of the NIRC of 1997, as amended. Section 40(C)(2) of the NIRC of 1997, as amended, states:

> ...
>
> **Sec. 40.** *Determination of Amount and Recognition of Gain or Loss.* –
>
> ...
>
> (C) *Exchange of Property.* –
>
> ...
>
> (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[.]
>
> ...

Correlatively, Section 40(C)(6)(b) of the same code defines merger, as follows:

> ...
> (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.[34]
>
> ...

From the foregoing, no gain or loss will be recognized on the exchange of property when two (2) conditions are met: *first,* there must be legal merger, and *second,* such business restructuring was done for a *bona fide* business purpose.

We find that the merger between petitioner and MPI is a legal merger and it was entered into for a *bona fide* business purpose. It bears stressing that the merger was done in accordance with the provisions of the Corporation Code[35], with the SEC's duly approved Articles and Plan of Merger as evidenced by the Certificate of Filing of the Articles and Plan of Merger[36] dated 27 May 2009.

---

[34] Emphasis supplied and italics in the original text.

[35] Sections 76 to 80 of the Corporation Code of the Philippines, as cited in the Certificate of Filing of the Articles and Plan of Merger.

[36] Exhibit "P-3", Division Docket, p. 273.

Moreover, We consider petitioner's intent to reduce costs in the business operation and improve efficiencies and economies as *bona fide* business purpose to merge MPI with it. In the case of *Commissioner of Internal Revenue v. Vicente A. Rufino, et al.*[37], the Supreme Court explained what constitutes as *bona fide* business purpose in a merger transaction, to wit:

> ...
>
> **The basic consideration, of course, is the purpose of the merger, as this would determine whether the exchange of properties involved therein shall be subject or not to the capital gains tax**. The criterion laid down by the law is that the merger "must be undertaken for a *bona fide* business purpose and not solely for the purpose of escaping the burden of taxation." **We must therefore seek and ascertain the intention of the parties** in the light of their conduct contemporaneously with, and especially after, the questioned merger pursuant to the Deed of Assignment of January 9, 1959.
>
> It has been suggested that one certain indication of a scheme to evade the capital gains tax is the **subsequent dissolution of the new corporation** after the transfer to it of the properties of the old corporation and the liquidation of the former soon thereafter. This highly suspect development is likely to be a mere subterfuge aimed at circumventing the requirements of Section 35 of the Tax Code while seeming to be a valid corporate combination. Speaking of such a device, Justice Sutherland declared for the *United States Supreme Court in Helvering v. Gregory*:
>
>> "When subdivision (b) speaks of a transfer of assets by one corporation to another, it means a transfer made 'in pursuance of a plan of reorganization' (Section 112[g]) of corporate business; and not a transfer of assets by one corporation to another in pursuance of a plan having no relation to the business of either, as plainly is the case here. Putting aside, then, the question of motive in respect of taxation altogether, and fixing the character of proceeding by what actually occurred, what do we find? Simply an operation having no business or corporate purpose – a mere devise which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any

[37] G.R. Nos. L-33665-68. 27 February 1987; Citation omitted and emphasis supplied.

> part of a business, but to transfer a parcel of corporate shares to the petitioner. No doubt, a new and valid corporation was created. But that corporation was nothing more than a contrivance to the end last described. It was brought into existence for no other purpose; it performed, as it was intended from the beginning it should perform, no other function. When that limited function had been exercised, it immediately was put to death.
>
> "In these circumstances, the facts speak for themselves and are susceptible of but one interpretation. The whole undertaking, though conducted according to the terms of subdivision (b), was in fact an elaborate and devious form of conveyance masquerading as a corporate reorganization and nothing else. The rule which excludes from consideration the motive of tax avoidance is not pertinent to the situation, because the transaction upon its face lies outside the plain intent of the statute. To hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose."
>
> We see no such furtive intention in the instant case. **It** is clear, in fact, that the purpose of the merger was to continue the business of the Old Corporation, whose corporate life **was** about to expire, through the New Corporation to which all the assets and obligations of the former had been transferred. What argues strongly, indeed, for the **New Corporation is that it was not dissolved after the merger agreement** in 1959. On the contrary, it continued to operate the places of amusement originally owned by the Old Corporation and transferred to the New Corporation, particularly the Capitol and Lyric Theaters, in accordance with the Deed of Assignment. The New Corporation, in fact, continues to do so today after taking over the business of the Old Corporation twenty-seven years ago.
>
> ...

The fact that petitioner continues to operate, after taking over MPI's business over a decade ago, only attests to the fact that the merger was for a legitimate business purpose.

Respondent's contention that the merger was not for a *bona fide* purpose, considering that the Ipil Property was later sold, is unavailing. As an incident of its ownership, petitioner possesses the right to dispose of its property.[38] It must also be noted that the Ipil Property was just one of the properties transferred by virtue of the merger. Verily, its subsequent sale seven (7) years thereafter cannot negate altogether the *bona fide* purpose of the merger.

With the above, the Court could only deem that the merger transaction between petitioner and MPI qualifies as a tax-free exchange under Section 40(C)(2) of the NIRC of 1997, as amended. Consequently, the imposition of WT under Section 2.57.2(J) of Revenue Regulations (RR) 2-98[39] and DST based on Section 196[40] of the NIRC of 1997, as amended, are without legal mooring. The two

---

38 Civil Code of the Philippines, Article 428.

39 *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

SEC. 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

...

(J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.* — A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent,/buyer, in accordance with the following schedule:

A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec. 2.57.5 of these regulations	Exempt
B. Upon the following values of real property, where the seller/transferor is habitually engaged in the real estate business:	
With a selling price of Five Hundred Thousand Pesos (P500,000.00) or less	1.5%
With a selling price of more than Five Hundred Thousand Pesos (P500,000.00) but not more than Two Million Pesos (P2,000,000.00)	3.0%
With a selling price of more than Two Million Pesos (P2,000,000.00)	5.0%
C. Where the seller/transferor is not habitually engaged in the real estate business	6.0%

40 **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...

provisions contemplate the sale of real properties. Such is not the scenario in a merger transaction.

In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[41], the Supreme Court held:

> ...
>
> 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.
>
> ...

Guided by the above, Section 199(m) of the NIRC of 1997, as amended, exempting the transfer of property pursuant to Section 40(C)(2) from DST should be applied. Likewise, given that there is no gain recognized on the exchange of property, there is no basis for the imposition of WT, which by its nature is an income tax.

C. BUREAU OF INTERNAL REVENUE RULING (BIR) IS NOT A CONDITION *SINE QUA NON* FOR THE AVAILMENT OF THE NON-RECOGNITION OF GAIN IN A MERGER TRANSACTION

Respondent insists that there must be a BIR ruling issued confirming the tax-exempt status of the merger before petitioner could avail of the non-recognition of gain.

---

[41] G.R. No. 192398, 29 September 2014; Emphasis supplied.

We disagree.

This Court has held consistently that nowhere in Section 40(C)(2)(a) in relation to Section 40(C)(6)(b) of the NIRC of 1997, as amended, requires a prior BIR ruling validating an exchange transaction (pursuant to a merger) as tax-free before petitioner may reap the benefits of the foregoing provisions.[42] The Court cannot read into the law what obviously was not intended by Congress. To do so would be judicial legislation, no less.[43]

Similarly, We are not convinced that RR 18-01[44] requires a prior BIR confirmation before petitioner's merger transaction with MPI may be conferred a tax-exempt status. Basic is the rule that the administrative agency issuing regulations may not enlarge, alter or restrict provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.[45] The rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted. It cannot also be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[46]

Again, We have ratiocinated in a number of cases[47] that the tax certification or ruling under Section 40(C)(2) of the NIRC of 1997, as amended, merely serves as a guide for the BIR in determining gain or loss on a subsequent sale or disposition of property subject of the tax-

---

42 *Commissioner of Internal Revenue v. Premium Tobacco Redrying & Fluecuring Corporation*, CTA EB No. 1755, 22 April 2019.

43 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, 17 April 2007.

44 *Guidelines on the Monitoring of the Basis of Property Transferred and Shares Received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40(C)(2) of the National Internal Revenue Code of 1997, Prescribing the Penalties for Failure to Comply with Such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof.*

45 *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, 15 April 2005.

46 *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, 21 July 2008.

47 *Commissioner of Internal Revenue v. Premium Tobacco Redrying & Fluecuring Corporation*, CTA EB No. 1755, 22 April 2019, supra at note 42; *Commissioner of Internal Revenue v. Lucio L. Co, et al.*, CTA EB No. 1522, 28 February 2018; *Commissioner of Internal Revenue v. Dakudao & Sons, Incorporated*, CTA EB Case No. 1150, 12 May 2015, supra at note 30.

free exchange, and not as a precondition for availment of a tax exemption.[48]

D. PETITIONER IS ENTITLED TO REFUND

Having determined that the imposition of withholding tax and DST was improper, We now ascertain petitioner's compliance with the requisites to entitle it to its claim for refund amounting to ₱33,051,830.00.

For a claim for refund to prosper under Section 204, in relation to Section 229 of the NIRC of 1997, as amended, the claimant must satisfy the following requirements:

> ...
>
> 1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[49]
>
> 2. That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;[50]
>
> 3. The claim for refund must be a categorical demand for reimbursement;[51] and,
>
> 4. There must be proof of payment of the erroneously or illegally collected taxes.[52]
>
> ...

---

48 Supra at note 42.
49 *Vda. De Aguinaldo v. Commissioner of Internal Revenue*, 13 SCRA 269 (1965).
50 *Gibbs v. Commissioner of Internal Revenue*, 107 Phil. 232 (1960).
51 *Bermeho v. Collector of Internal Revenue*, 87 Phil. 96 (1950).
52 *Aguilar v. Commissioner of Internal Revenue*, CA-G.R. SP-16432, 30 March 1990.

As previously discussed, petitioner filed the Request for Refund or Issuance of Tax Credit Certificate[53], accompanied by the Application for Tax Credits/Refunds[54] (BIR Form No. 1914), with respondent on 21 May 2018. Thereafter, it filed the instant Petition for Review before this Court on 26 February 2019. Petitioner thus complied with the first three (3) requirements upon the timely filing of the administrative and judicial claims for refund within two (2) years from date of payment on 27 February 2017.

As regards the last requisite, petitioner has sufficiently proven that it has paid the subject claim for refund in the amount of ₱33,051,830.00 pertaining to the WT and DST due on the transfer of parcel of land from MPI to petitioner by virtue of a merger transaction, as evidenced by the BIR stamped "Received" Withholding Tax Remittance Return (BIR Form No. 1606)[55] and Documentary Stamp Tax Declaration/Return (BIR Form No. 2000-OT)[56] and the corresponding Metrobank Payment Slips.[57]

Moreover, the parties have stipulated in their JSFI[58] that:

> ...
>
> 10. On February 27, 2017, Petitioner paid the assessed withholding tax and documentary stamp tax amounting to Php26,411,464.00 and Php6,640,366.00, respectively, inclusive of surcharge, interest and penalties.
>
> 11. On May 21, 2018, Petitioner filed its administrative claim for refund or issuance of tax credit certificate arising from erroneously paid and/or illegally collected withholding tax and documentary stamp tax amounting to Php 26,411,464.00 and Php 6,640,366.00, respectively.
>
> 12. Petitioner did not claim such erroneously paid and/or illegally collected withholding tax amounting to Php26,411,464.00 as tax credit/payment in its 2017 and 2018 Annual Income Tax Return (ITR).
>
> ...

---

53 Exhibit "P-18", Division Docket, pp. 322-330.
54 Exhibits "P-19" and "P-20", id., pp. 331-332.
55 Exhibit "P-8", id., p. 303.
56 Exhibit "P-11", id., p. 306.
57 Exhibits "P-10" and "P-13", id., pp. 305 and 309.
58 Id., p. 225.

With the above disquisitions and the parties' own stipulations, We find that petitioner has fully substantiated its claim warranting the entitlement to a refund or issuance of a TCC.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Luzviminda Land Holdings, Inc. is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Luzviminda Land Holdings, Inc. the amount of ₱33,051,830.00, representing petitioner's erroneously paid withholding tax and documentary stamp tax inclusive of surcharges, interests and penalties.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice