REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

PREMIUM LEISURE CORP. (Formerly: SINOPHIL CORPORATION),
Respondent.

CTA EB No. 1702
(CTA Case No. 8940)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

APR 25 2018 3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal of the Decision dated March 14, 2017,[2] (assailed Decision) as well as the Resolution dated July 20, 2017[3] (assailed Resolution) of the Third Division (Court in Division) of this Court in CTA Case Nos. 8940 entitled *"Premium*

[1] Court *En Banc's* Docket, pp.6-10.
[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, *Id.*, pp. 14-34.
[3] Court *En Banc*'s Docket, pp. 36-41.

Leisure Corp. (Formerly: Sinophil Corporation) v. Commissioner of Internal Revenue".

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱6,522,000.00**, representing erroneously paid capital gains tax from its receipt of real property by way of liquidating dividends from BBCC.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The factual antecedents of the present case, as presented by the Court in Division in its Decision dated March 14, 2017, are as follows:[4]

> "Petitioner Premium Leisure Corp.[5] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal address at 5th Floor, Two E-Com Center, Mall of Asia Complex, CBP-1A, Pasay City. It is primarily established to invest in, purchase, or otherwise acquire and own, hold, use, develop, lease, sell, assign, transfer, mortgage, pledge, exchange, operate, or otherwise dispose of all properties of every kind, nature and description. Previously, petitioner did business under the name

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[4] Court *En Banc's* Docket, pp. 14-18.

[5] Respondent in the present Petition for Review.

of Sinophil Corporation until the Securities and Exchange Commission (SEC) approved the amendment of its Articles of Incorporation, changing its name to Premium Leisure Corp. on September 5, 2014.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR)[6] empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is the registered holder of 74,027,418 shares of the capital stock of BBCC.[7] On January 27, 2005, the Securities and Exchange Commission approved BBCC's Amended Articles of Incorporation, wherein Article IV thereof was amended to shorten the term of BBCC's existence only until January 31, 2004.

Pursuant to BBCC's letter dated June 27, 2006, requesting confirmation from the BIR of its opinion as regards certain tax implications in relation to the transfer of its lots to its stockholders as liquidating dividends, the BIR issued BIR Ruling DA-316-2007 on May 29, 2007 declaring that the transfer by BBCC of the reclaimed lots to its stockholders as liquidating dividends is not subject to income tax, creditable withholding tax, and documentary stamp tax; and that the receipt of reclaimed lots as liquidating dividends by the stockholder is a taxable income or a deductible loss, as the case may be.

On November 12, 2012, BBCC executed a Deed of Conveyance in favor of petitioner, transferring a parcel of land with an area of 4,348 square meters, more or less, located in Aseana Business Park, Roxas Blvd. Parañaque City and is duly covered by Transfer Certificate of Title (TCT) No. 169887, as liquidating dividends.

On November 16, 2012, petitioner filed before the BIR its Withholding Tax Remittance Return and Documentary Stamp Tax Declaration/Return without having remitted or paid any corresponding withholding tax or documentary stamp tax.

[6] Petitioner in the present Petition for Review.
[7] Belle Bay City Corporation.

In its 2012 Annual Income Tax Return, petitioner reported the fact of its receipt of liquidating dividends from BBCC by recognizing a net liquidating gain of ₱33,324,175.00 as part of its 'Other Taxable Income not Subjected to Final Tax,' thus, subjecting said liquidating gains to the thirty percent (30%) regular corporate income tax.

On November 28, 2012, petitioner filed its Capital Gains Tax Return with the Land Bank of the Philippines (LBP), Baclaran Branch and paid under protest the amount of ₱6,522,000.00 allegedly representing capital gains tax arising from its receipt of real property by way of liquidating dividends from BBCC.

On April 8, 2014, petitioner filed an application for refund and/or issuance of TCC, through a Letter dated March 28, 2014, to recover the capital gains tax previously remitted in the amount of ₱6,522,000.00 in relation to the conveyance of real properties by BBCC to petitioner by way of liquidating dividends.

There being no action taken by respondent on petitioner's administrative claim for refund or issuance of TCC, petitioner filed the present Petition for Review before this Court on November 28, 2014.

Respondent filed his Answer (with Motion to Dismiss), through registered mail on February 23, 2015 and received by the Court on March 5, 2015, interposing as Special and Affirmative Defenses: that petitioner claims that as a condition precedent for the imposition of such tax (6% capital gains tax), it is required that there must be a closed and completed transaction in which the transferor corporation has the potential to realize income; that capital gains tax is a final tax assessed on the presumed gain derived by Belle Bay City Corporation ('BBCC') from the disposition of their parcel of land located at Barangay Tambo, Aseana Business Park, Parañaque City, in exchange of common shares of stock owned by petitioner; that it is not essential that a gain must be realized first before a Corporation may be held liable under Section 27 (D)(5) of the National Internal Revenue Code since gain is presumed from the disposition of their real property considered as capital asset; that petitioner claims under paragraph 8 of the Petition that on May 29, 2007 the Commissioner of Internal Revenue (CIR) issued BIR Ruling DA-316-07 to address the query of BBCC which provides that, BBCC's transfer of real properties by way of liquidating dividends to its stockholders is not considered as a sale of such assets for tax purposes. Consequently, the same will not give rise to any liability for payment of income tax, withholding tax and documentary stamp tax since BBCC, as a corporation undergoing the process of liquidation, will not realize any taxable gain or loss during such process. However, any liquidating gain that may be realized by its stockholders, which represents the difference between the fair market value of the properties received and the and the cost basis of their investment in BBCC, shall be treated as a gain from the sale or exchange of shares which is subject only to regular income tax; that on December 5, 2011 the CIR issued BIR Ruling No. 479-2011 in response to Aguierre Pawnshop, Inc.'s request for confirmatory ruling on the tax implications of distributing remaining assets of the corporation to its stockholders by way of liquidating dividends; that BIR Ruling DA-316-07 secured by BBCC on May 29, 2007, having the same set of facts and issues interrelated to Aguierre Pawnshop, Inc.'s request for confirmatory ruling, was deemed reversed and set aside through the issuance of BIR Ruling No. 479-2011 on December 5, 2011; that the nature of this Petition consist of claim for refund and/or issuance of tax credit certificates to recover capital gains tax erroneously remitted. Petitioner remitted the capital gains tax on November 28, 2012, almost one year after BIR Ruling No. 479-2011 was issued, wherein respondent Commissioner held liable the liquidating corporation for income tax on its transfer of properties to its shareholder and on its receipt of the surrendered shares from the shareholder. Hence, this Petition must fail as there was no erroneous remittance or payment was made; that under Article 1487 of the Civil Code and Section 2 of Revenue Regulations No. 13-85, the seller who was conclusively presumed to have realized capital gains from every sale or exchange or other disposition of real property classified as capital asset is the one obliged to pay the capital gains tax, based on its obligation to transfer title over the property to the seller; that BBCC as seller is the one liable for the payment of the corresponding capital gains tax; that BBCC should be the proper party who should file the claim for refund in this case and not the buyer as herein petitioner; that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; and that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected.

Petitioner filed its Reply on March 9, 2015. In the Resolution dated April 20, 2015, the Court held that the interests of justice would be more adequately served if trial would ensue and both parties are given the opportunity to present evidence to back up their respective claims. Hence, respondent's Motion to Dismiss was denied.

The Pre-Trial Conference was set on June 9, 2015. Petitioner filed its Pre-Trial Brief on June 4, 2015; while respondent's Pre-Trial Brief was filed through registered mail on June 5, 2015 and received by the Court on June 18, 2015. The parties filed their Joint Stipulation of Facts and Issues on June 18, 2015. The Pre-Trial Order was issued on August 7, 2015.

Petitioner filed its Formal Offer of Evidence on September 29, 2015, offering Exhibits 'P-1', 'P-1-a', 'P-2', 'P-3', 'P-4', 'P-4-a', 'P-5', 'P-6', 'P-6-a', 'P-6-b', 'P-7', 'P-8', 'P-9', 'P-10', 'P-10-a', 'P-11', 'P-11-a', 'P-12', 'P-12-a', 'P-12-b', 'P-13', 'P-14', 'P-14-a', 'P-15', 'P-15-a', 'P-16', and 'P-16-a', as its documentary evidence. Respondent, however, failed to file his comment to petitioner's Formal Offer of Evidence.

In the Resolution dated November 16, 2015, the Court admitted Exhibits 'P-1', 'P-1-a', 'P-2', 'P-3', 'P-4', 'P-4-a', 'P-5', 'P-6', 'P-6-a', 'P-6-b', 'P-7', 'P-8', 'P-9', 'P-10', 'P-10-a', 'P-11', 'P-11-a', 'P-12', 'P-12-a', 'P-12-b', 'P-13', 'P-14', 'P-14-a', 'P-15', 'P-15-a', 'P-16', and 'P-16-a'. Respondent manifested that he would not present evidence since no report of investigation was submitted to him by the BIR examiners.

Petitioner filed its Memorandum on March 15, 2016; while the Memorandum for Respondent was filed through registered mail on March 9, 2016 and received by the Court on March 18, 2016. The case was declared submitted for decision on March 29, 2016." *(Citations omitted)*

On March 14, 2017, the Court in Division rendered the Assailed Decision granting respondent's Petition for Review. The Court in Division ordered petitioner to refund or to issue a tax credit certificate in favor of respondent in the amount of Six Million Five Hundred Twenty-Two Thousand Pesos (₱6,522,000.00) representing its erroneously paid capital gains tax from its receipt of real property by way of liquidating dividends from BBCC.

Aggrieved, petitioner filed a Motion for Reconsideration on April 5, 2017 which the Court in Division denied in the Assailed Resolution.

On August 24, 2017, petitioner filed the present Petition for Review via registered mail.

On October 30, 2017, respondent filed its Comment (To Petitioner's *Petition for Review* dated 19 July 2017[8]) with Notice of Change of Name.[9]

In a Resolution[10] dated November 23, 2017, the Court *En Banc* gave due course to the present Petition for Review. Accordingly, the Court *En Banc* granted the parties a period of thirty (30) days from notice within which to file their Memoranda.

On January 19, 2018, respondent filed its Memorandum.[11] Petitioner, on the other hand, failed to file his Memorandum as per Records Verification dated January 29, 2018[12] issued by this Court's Judicial Records Division.

On February 23, 2018, the present Petition for Review was submitted for decision.[13]

THE COURT *EN BANC*'S RULING

The Petition for Review is bereft of merit.

After judicious review of the arguments of the parties, the issues raised, and the evidence on record, the Court *En Banc* holds that respondent is entitled to a refund of the erroneously paid capital gains tax (CGT) on the liquidating dividends received by respondent from BBCC.

It must be noted that the Court in Division, in granting respondent's claim for refund, had ruled that mere distribution of liquidating dividends of a corporation is not to be treated as sale for purposes of the imposition of CGT.[14] The Court in Division held that CGT is a tax on the gain from sale of taxpayer's property from part of capital assets and such definition implies that in order to be liable for payment of CGT, one has to profit or gain from sale, exchange or disposition of the real property.[15] Thus, in the absence of

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[8] It should be August 24, 2017.
[9] Court *En Banc*'s Docket, pp. 50-61.
[10] *Id.*, pp. 64-65.
[11] *Id.*, pp. 66-84.
[12] *Id.*, p. 86.
[13] *Id.*, pp. 88-89.
[14] *Id.*, p. 24.
[15] *Id.*, p. 25.

income from or the absence of sale, disposition or conveyance of real property, the imposition of CGT does not arise.[16]

To reiterate, the Court *En Banc* is of the view that receipt by a stockholder, whether corporate or individual, of liquidating dividends is not subject to CGT. The basis for this position is not because of the absence of income from or the absence of sale, disposition or conveyance of real property, but because such transaction is subject to ordinary income tax on the part of the individual stockholders, or corporate income tax for corporate stockholders.

Section 73(A) of the 1997 NIRC definitely provides that any gain derived, or any loss sustained by a stockholder from its receipt of liquidating dividends shall be treated as taxable income or deductible loss, as the case may be. The said provision reads:

> "SEC. 73. *Distribution of Dividends or Assets by Corporations.* —
>
> (A) *Definition of Dividends.* — The term *'dividends'* when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.
>
> **Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be."** *(Emphasis supplied)*

The law is clear. There is, therefore, no room for interpretation.

To implement the foregoing provision, Section 8 of Revenue Regulations (RR) No. 06-2008[17] prescribes the rules to be observed in computing the taxable gain or deductible loss of stockholders, as the case may be, upon their receipt of liquidating dividends. It further clarified that the capital gain or loss derived by stockholders in receiving liquidating dividends are subject to regular income tax rates for individual stockholders, and corporate income tax rates for corporate stockholders. For ready reference, the said provision is quoted below:

[16] *Id.*

[17] Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock held as Capital Assets (Dated April 22, 2008).

> "SEC. 8. *Taxation of Surrender of Shares by the Investor Upon Dissolution of the Corporation and Liquidation of Assets and Liabilities of Said Corporation.* — Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, **the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable.** If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.
>
> **The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations.**" *(Emphasis supplied)*

It may be recalled that in the case of *Wise & Co., Inc. v. Meer*,[18] the Supreme Court had characterized the receipt of liquidating dividend by stockholders as follows:

> "**Our law at the time of the transactions in question, in providing that where a corporation, etc. distributes all its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder is a taxable income or a deductible loss as the case may be, in effect treated such distributions as payments in exchange for the stock or share.** Thus, in making the deficiency assessments under consideration, the Collector, among other items, made proper *deduction* of the 'value of shares' or 'cost of shares' in the case of each individual plaintiff, assessing the tax only on the resulting 'profit realized' (Stipulation, par. VII, Record on Appeal, pp. 22-25); and of course in case the value or cost of the shares should exceed the distribution received by the

[18] G.R. No. 48231, June 30, 1947, 78 Phil. 655, 671.

> stockholder, the resulting difference will be treated as a 'deductible loss.'
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> x x x x x x x x x
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> It should be borne in mind that plaintiffs received the distributions in question in exchange for the surrender and relinquishment by them of their stock in the Hongkong Company which was dissolved and in process of complete liquidation. That money in the hands of the corporation formed a part of its income and was properly taxable to it under the then existing Income Tax Law. **When the corporation was dissolved and in process of complete liquidation and its shareholders surrendered their stock to it and it paid the sums in question to them in exchange, a transaction took place, which was no different in its essence from a sale of the same stock to a third party who paid therefor. In either case the shareholder who received the consideration for the stock earned that much money as income of *his own*, which again was properly taxable to him under the same Income Tax Law.** In the case of the sale to a third person, it is not perceived how the objection of double taxation could have been successfully raised. Neither can we conceive how it could be available where, as in this case, the stock was transferred back to the dissolved corporation." *(Emphasis supplied)*

In *Fernando v. Spouses Lim*,[19] the Supreme Court enunciated anew the proper tax treatment of liquidating dividend in the following manner:

> "The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as ***a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved.*** Thus, on the part of the stockholder, any gain or loss is subject to tax, while on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said

[19] G.R. No. 176282, August 22, 2008, 563 SCRA 147, 166.

stockholder because said transaction is not treated as a sale." *(Citations omitted)*

From both cases, it can be gleaned that the surrender of shares by stockholders in exchange for assets distributed by the corporation upon dissolution thereof and liquidation of its assets and liabilities is treated by the Supreme Court as sale by the stockholder of its shares to the dissolved corporation and any gain derived by the stockholder from such transaction is subject to income tax.

Taking into consideration the foregoing, the conclusion in the present case is inevitable. At any rate, it was already established before the Court in Division that respondent had reported its receipt of the liquidating dividends in its 2012 ITR and had recognized a net liquidating gain of ₱33,324,175.00 as part of its "Other Taxable Income not Subjected to Final Tax".[20] Accordingly, respondent had subjected the said gain to 30% regular corporate income tax.[21] Having already paid corporate income tax for the gains it derived from its receipt of liquidating dividends from BBCC, respondent's payment of CGT for the same income is clearly erroneous and should be refunded.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[20] Court *En Banc*'s Docket, p. 16.
[21] *Id.*

(On Leave)
ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice