REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BELLE CORPORATION, Petitioner,	**CTA CASE NO. 8939**
- versus -	Present: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 20 2017 3:30 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before this Court is a Petition for Review[1] filed by Belle Corporation on November 28, 2014, praying that judgment be rendered ordering the Commissioner of Internal Revenue to refund or to issue a tax credit certificate in the amount of SIXTY-THREE MILLION TWO HUNDRED FORTY-NINE THOUSAND PESOS (₱63,249,000.00), allegedly representing remitted capital gains tax (CGT) arising from its receipt of real properties from Belle Bay City Corporation (BBCC), by way of liquidating dividends.

The Facts

Petitioner Belle Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 5th Floor, Two E-Com Center, Mall of Asia Complex, CBP-

[1] Docket, pp. 14-26.

1A, Pasay City. It is primarily established to invest in the 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.[2] Petitioner owns 852,455,306 common shares of stocks in BBCC.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) 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.

On January 27, 2005, the Securities and Exchange Commission (SEC) approved BBCC's amended Articles of Incorporation, which shortened the term of BBCC's existence until January 31, 2004, thus dissolving said corporation.[4]

Following the dissolution of BBCC, petitioner received several of BBCC's remaining real properties as liquidating dividends by virtue of a Deed of Conveyance[5] executed on November 12, 2012. Said properties comprised of eight (8) parcels of land located at Barangay Tambo, Aseana Business Park, Paranaque City, having an aggregate area of 42,166 square meters, more or less, and covered by Transfer Certificates of Title Nos. 010-2010000878, 010-2010000879, 010-2010000880, 010-201000881, 010-2010000882, 010-2010000883, 169890, and 136452 of the Registry of Deeds of Parañaque City.

On May 29, 2007, the BIR issued BIR Ruling No. DA-316-2007 declaring that BBCC's transfer of real properties by way of liquidating dividends to its stockholders is not considered a sale of such assets for tax purposes.[6] Consequently, the same will not give rise to any liability for payment of income tax, creditable withholding tax, and documentary stamp tax since BBCC, as a corporation undergoing the process of liquidation, will not realize a taxable gain or loss during such process.

On November 16, 2012, petitioner filed before the BIR-Revenue District Office (RDO) No. 52 a Withholding Tax Remittance Return and Documentary Stamp Tax Return without remitting or paying any corresponding withholding tax or documentary stamp tax. 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 ₱413,625,407.00 as part of its Other Taxable

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[2] Facts, Pre-Trial Order, docket, pp. 435-436.
[3] Exhibits "P-3" to "P-3-g".
[4] Exhibits "P-4", "P-4-a", and "P-6".
[5] Exhibit "P-6".
[6] Exhibit "P-5".

Income not Subjected to Final Tax, thus, subjecting said liquidating gains to the thirty percent (30%) regular corporate income tax.[7]

On November 28, 2012, petitioner remitted CGT under protest in the amount of ₱63,249,000.00 and filed the corresponding Capital Gains Tax Return (BIR Form No. 1706) with the Land Bank of the Philippines-Baclaran Branch, which is among the list of authorized agent banks for BIR-RDO No. 52.[8]

Subsequently, petitioner filed a Letter dated November 28, 2012 with the BIR, informing the latter that petitioner's remittance of the CGT is being made under protest.[9]

On April 8, 2014, through its Letter dated March 28, 2014, petitioner formally filed its application for refund and/or issuance of tax credit certificate with the BIR to recover the CGT amounting to ₱63,249,000.00, arising from its receipt of real properties of BBCC by way of liquidating dividends.[10]

On November 28, 2014, petitioner filed the instant Petition for Review before this Court.

In his Answer[11] filed on February 18, 2015, respondent interposed, among others, the following special and affirmative defenses: (1) the exchange by BBCC of its reclaimed lots with petitioner's surrender of shares of stocks is not a mere transfer or return of invested capital but an exchange, and is therefore subject to capital gains tax, under Section 27(D)(5) of the National Internal Revenue Code (NIRC) of 1997, as amended; and (2) petitioner does not have legal personality to sue.

Petitioner filed its Reply[12] on March 5, 2015.

The case was set for pre-trial conference on April 28, 2015.[13] Thus, respondent and petitioner filed their Pre-Trial Briefs on April 21, 2015[14] and on April 23, 2015[15], respectively.

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[7] Par. 6, Petitioner's Memorandum, docket, p. 741.
[8] Exhibits "P-10", "P-10-a", and "P-11".
[9] Exhibit "P-12".
[10] Exhibit "P-14".
[11] Docket, pp. 112-115.
[12] Reply, docket, pp. 116-127.
[13] Notice of Pre-Trial Conference, docket, p. 128.
[14] Respondent's Pre-Trial Brief, docket, pp. 129-131.
[15] Pre-Trial Brief, docket, pp. 132-148.

On May 8, 2015, the parties filed their Joint Stipulation of Facts and Issues[16], which was adopted by the Court in the Pre-Trial Order[17] dated May 28, 2015.

During trial, petitioner presented the following witnesses: (1) Ms. Cecilia R. Patricio[18] – Senior Vice President for the Corporate Tax Division of SM Investments Corporation (SMIC); and (2) Ms. Rosemarie R. Abueva[19] – petitioner's Senior Assistant Vice President for the Accounting Department. It likewise formally offered its documentary evidence on October 21, 2015.[20]

The Court issued a Resolution[21] on November 25, 2015, admitting as petitioner's evidence Exhibits "P-1", "P-1-a", "P-2", "P-3" to "P-3-g", "P-4", "P-4-a", "P-5", "P-6", "P-6-a", "P-6-b", "P-6-c", "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-a", "P-14", "P-14-a", "P-15", "P-15-a", "P-16", and "P-16-a".

Meanwhile, during the hearing on February 1, 2016, respondent manifested that no report of investigation was submitted by the Revenue Officers; thus, he would no longer present evidence.[22]

As directed by the Court, petitioner filed its Memorandum[23] on March 2, 2016, while respondent manifested that he would be adopting all his pleadings filed in relation to this case as his Memorandum.[24]

Consequently, the case was declared submitted for decision on April 25, 2016.[25]

The Issues

The parties submitted the following issues[26] for this Court's disposition:

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[16] Docket, pp. 426-432.
[17] Docket, pp. 435-440.
[18] Minutes of the Hearing dated June 30, 2015, docket, p. 577.
[19] Minutes of the Hearing dated October 13, 2015, docket, p. 630.
[20] Formal Offer of Evidence, docket, pp. 631-644
[21] Docket, p. 735.
[22] Minutes of the Hearing dated February 1, 2016, docket, p. 736.
[23] Docket, pp. 739-767.
[24] Manifestation (In Lieu of Submission of Memorandum), docket, pp. 775-776.
[25] Resolution dated April 25, 2016, docket, p. 779.
[26] Issues, Pre-Trial Order, docket, p. 436.

1. Whether or not the transfer of real properties by BBCC to petitioner, by way of liquidating dividends, is subject to the six percent (6%) final withholding capital gains tax prescribed under Section 27(D)(5) of the Tax Code;

2. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificates to recover the six percent (6%) final withholding capital gains tax it had erroneously remitted to the BIR pursuant to Sections 204(C) and 229 of the Tax Code; and

3. Whether or not petitioner is the proper party to claim for refund.

Petitioner's Arguments

Petitioner insists it is entitled to a refund or a tax credit certificate considering that the conveyance of real properties by BBCC in favor of petitioner as liquidating dividend may not be considered as a taxable sale or exchange of properties, and thus, not subject to capital gains tax.[27] It avers that during the process of winding up of its affairs, a liquidating corporation, such as BBCC, does not realize any gain or loss from the transfer of its remaining properties to stockholders, considering that the said transfer cannot be considered as a sale, but merely a return of invested capital which is clearly exempt from capital gains tax. Therefore, in the absence of any valuable consideration, petitioner asserts that respondent erred in treating BBCC's conveyance of liquidating dividends to petitioner as a taxable sale of real property that is subject to 6% final withholding CGT.[28]

Respondent's Arguments

Respondent avers that BBCC transferred several of its remaining real properties to petitioner as liquidating dividends. Respondent insists that this transaction is not a mere transfer or return of invested capital but an exchange of the reclaimed lots by BBCC with petitioner's surrender of shares of stocks. By reason of this exchange, the said transaction qualifies as one which falls under Section 27(D)(5) of the NIRC of 1997, as amended.

Moreover, respondent claims that the Petition for Review should be dismissed outright for petitioner's lack of legal personality to sue. Under existing law and regulations, in case of sale, transfer or exchange of real property, it is the

[27] Discussion, Memorandum, docket, p. 752.
[28] Discussion, Memorandum, docket, p. 759.

seller that is directly liable to pay the corresponding capital gains tax. A perusal of the submitted BIR Form No. 1706 shows that BBCC is the seller, while petitioner is the buyer. Thus, BBCC should be the proper party to file the claim for refund and not the buyer as herein petitioner.

The Court's Ruling

The petition is meritorious.

Jurisdiction of the Court of Tax Appeals

The Court's jurisdiction is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282, which, in Section 7, states:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise: (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: x x x
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations 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 provides a specific period of action, in which case the inaction shall be deemed a denial; xxx

Based on the above-quoted provision, the Court has the power to determine whether or not petitioner is entitled to a tax refund or the issuance of a tax credit certificate in the amount of ₱63,249,000.00, representing CGT erroneously remitted by petitioner arising from its receipt of real properties, by way of liquidating dividends.

Timeliness of the Filing the Petition for Review

Section 204(C) of the NIRC of 1997, as amended, provides:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may – x x x

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **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. *(Emphasis supplied)*

Section 229 of the NIRC of 1997, as amended, states:

> 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.
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> **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. *(Emphasis supplied)*

Section 229 governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected pursuant to the Tax Code.[29] Consequently, Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to this Court must be filed within the two (2)-year period from

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[29] *Commissioner of Internal Revenue vs. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006.

the date of payment of the tax, regardless of any supervening cause that may arise after payment. Therefore, the date of payment of the tax is important for purposes of counting the two-year prescriptive period.[30]

Records show that petitioner paid the amount of ₱63,249,000.00 representing capital gains tax[31] from its receipt of real property by way of liquidating dividends from BBCC on November 28, 2012. From the said date, petitioner had two years or until November 28, 2014 within which to file its administrative and judicial claims for refund. In this case, petitioner filed its administrative claim for refund and/or issuance of tax credit certificate[32] on April 8, 2014 and its judicial claim on November 28, 2014. Hence, both administrative and judicial claims were filed within the two-year prescriptive period.

Legal interest of a withholding agent in a claim for refund and/or issuance of TCC

Petitioner contends that, as a withholding agent of both BBCC and the BIR and as the actual party who paid the subject tax, it has the legal capacity to file the instant application for refund. On the other hand, respondent argues that BBCC is the proper party who should file the claim for refund and not petitioner who does not have the necessary qualification to appear in this case or does not have the character or representation it claims.

The Court finds for petitioner.

In *Commissioner of Internal Revenue vs. Smart Communication, Inc.*[33], the Supreme Court held that a withholding agent may file a claim for refund, thus:

> Pursuant to [Sections 204(C) and 229 of the NIRC of 1997, as amended], the person entitled to claim a tax refund is the taxpayer. However, **in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.**
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> In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation,* a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:

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[30] *Manila North Tollways Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012.
[31] Exhibits "P-10" and "P-11".
[32] Exhibit "P-14".
[33] G.R. Nos. 179045-46, August 25, 2010.

> The term 'taxpayer' is defined in our NIRC as referring to 'any person subject to tax imposed by the Title [on Tax on Income].' It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax' and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
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> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as not 'subject to tax.' **By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.**" (*Emphasis supplied*)

Moreover, in *The Philippine Guaranty Co., Inc. vs. The Commissioner of Internal Revenue, et al.* [34], the Supreme Court discussed the responsibility of a withholding agent as the agent of both the Government and the taxpayer, as follows:

> The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the

[34] G.R. No. L-22074, September 6, 1965.

> Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable by law.

In *Honda Cars Philippines, Inc. vs. Honda Cars Technical Specialist and Supervisors Union*[35], the High Tribunal recognized the right of the withholding agent to file a claim against an illegal and erroneous collection of tax, to wit:

> Moreover, the NIRC only holds the withholding agent personally liable for the tax arising from the breach of his legal duty to withhold, as distinguished from his duty to pay tax. Under Section 79 (B) of the NIRC, if the tax required to be deducted and withheld is not collected from the employer, the employer shall not be relieved from liability for any penalty or addition to the unwithheld tax.
>
> Thus, if the BIR illegally or erroneously collected tax, the recourse of the taxpayer, and in proper cases, the withholding agent, ***is against the BIR***, and not against the withholding agent. The union's cause of action for the refund or non-withholding of tax is against the taxing authority, and not against the employer. xxx

Petitioner, as a withholding agent, is a party in interest or a person having sufficient legal interest to bring a suit for issuance of tax credit certificate or refund of illegally or erroneously collected taxes. It is considered a "taxpayer" under the NIRC of 1997, as amended, since it is personally liable for the withholding tax and deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law; and as an agent of the taxpayer, its authority to file the necessary returns and to remit the tax withheld to the government necessarily includes the authority to file a claim for refund and/or issuance of tax credit certificate and to bring an action for recovery of such claim.

Entitlement to Refund

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[35] G.R. No. 204142, November 19, 2014.

The authority to impose capital gains tax is found in Section 24(D) of the NIRC of 1997, as amended, quoted as follows:

> SEC. 24. *Income Tax Rates.* – x x x
>
> (D) *Capital Gains from Sale of Real Property.* –
>
> (1) *In General.* – The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the **sale, exchange, or other disposition of real property** located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: *Provided*, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer. (*Emphasis supplied*)

Capital gains tax is a tax on the gain from the sale of the taxpayer's property forming part of capital assets.[36] It implies that in order to be liable for payment of capital gains tax, one has to profit or gain from the sale, exchange or disposition of the real property. In other words, in the absence of income from or the **absence of sale**, disposition or conveyance of real property, the imposition of capital gains tax does not arise.[37]

A contract of sale is defined under Article 1458 of the Civil Code, as follows:

> Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

From the foregoing, it follows that for a contract to be valid, it must have three essential elements: (1) consent of the contracting parties; (2) object certain

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[36] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.), et al.*, G.R. No. 104171, February 24, 1999.

[37] *Spouses Mabutas vs. Hon. Lilian B. Hefti, OIC-Commissioner of Internal Revenue*, CTA Case No. 7659, June 3, 2009.

which is the subject matter of the contract; and (3) cause of the obligation which is established.[38]

In *Oranbo Realty Corporation vs. The Commissioner of Internal Revenue*[39], this Court ruled that the conveyance of real property as a result of a valid dissolution was without any consideration, as follows:

> There is no question that the Deed of Conveyance was issued in favor of petitioner by Noma Development Corporation as liquidating dividend being the sole stockholder of the latter. The conveyance of real property was effected without any consideration since it was done in pursuance to a valid dissolution of Noma Development Corporation and not by sale.

It must be emphasized that the subject real property was distributed in the form of liquidating dividend as a consequence of BBCC's dissolution as clearly stated in the Deed of Conveyance[40] executed by BBCC as assignor and by petitioner as assignee, *viz*:

> WHEREAS, the ASSIGNOR is currently in the process of winding up its affairs as a juridical entity after having been dissolved through the shortening of its corporate term which was approved by the Securities and Exchange Commission on 27 January 2005;
>
> WHEREAS, the ASSIGNEE is a shareholder of the ASSIGNOR holding approximately Forty-Five Percent (45%) of the outstanding capital stock of the latter at the time of its dissolution;
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> WHEREAS, in light of the approval by the SEC of the dissolution of ASSIGNOR, its Board of Directors, having been reconstituted as Board of Liquidators, approved the proportionate distribution to its stockholders of all remaining assets, consisting mainly of several parcels of land located at the Aseana Business Park, Roxas Boulevard, Parañaque City, Metro Manila, as liquidating dividends;
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> WHEREAS, pursuant to the Distribution Plan approved by the Board of Liquidators and ratified by the stockholders representing at least a majority of the outstanding capital stock of

[38] *Heirs of Dr. Mario S. Intac, et al. vs. Court of Appeals, et al.*, G.R. No. 173211, October 11, 2012.
[39] CTA Case No. 4820, January 23, 1995.
[40] Exhibit "P-6".

> the ASSIGNOR, certain parcels of land have been allocated for distribution to the ASSIGNEE;
>
> NOW, THEREFORE, for and in consideration of the foregoing premises, the ASSIGNOR hereby ASSIGNS, TRANSFERS and CONVEYS unto the ASSIGNEE, the following parcels of land, free from all liens and encumbrances, which properties shall form part of the latter's distributive share or liquidating dividends, as shareholder of ASSIGNOR: x x x[41]

In *Heirs of the Late Spouses Aurelio and Esperanza Balite, et al. vs. Rodrigo N. Lim*[42], the Supreme Court ruled that:

> When the words of a contract are clear and readily understandable, there is no room for construction. Contracts are to be interpreted according to their literal meaning and should not be interpreted beyond their obvious intendment. The contract is the law between the parties.

Considering that the conveyance by BBCC in favor of petitioner was done in pursuance of BBCC's dissolution and considering further that the real property is conveyed as a liquidating dividend, the transaction is therefore not subject to capital gains tax.

Likewise, in *Victoria Fernando vs. Sps. Reginaldo Lim and Asuncion Lim*[43], the Supreme Court declared that a mere distribution of liquidating dividends on account of the dissolution of a corporation is not considered a sale of asset by the liquidating corporation for the purpose of the imposition of capital gains tax, as follows:

> The ***provisional*** ruling of the MeTC on said issue is that P.D. No. 1517 does not apply to the case because there was no sale between LKTSI and respondents but a mere distribution of liquidating dividends on account of the dissolution of LKTSI.
>
> 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

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[41] Docket, vol. I, p. 356 .
[42] G.R. No. 152168, December 10, 2004.
[43] G.R. No. 176282, August 22, 2008.

> 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 stockholder because said transaction is not treated as a sale.** *(Emphasis supplied)*

The Supreme Court's ruling that the distribution of liquidating dividends as a result of dissolution is not subject to tax, constitutes a binding precedent in similar cases. The decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[44] In the case of *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.* [45], the High Court held that –

> xxx judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.

In view of the foregoing, BBCC's transfer of real property as a liquidating dividend in favor of petitioner is not subject to capital gains tax.

WHEREFORE, premises considered, the instant 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 **₱63,249,000.00**, representing erroneously paid capital gains tax from its receipt of real property by way of liquidating dividends from BBCC.

SO ORDERED.

Ma. Belen M. R-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[44] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.
[45] G.R. No. 110318, August 28, 1996.

WE CONCUR:

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BELLE CORPORATION, *Petitioner,*	**CTA CASE NO. 8939**
	Members: **Bautista,** Chairperson, **Fabon-Victorino,** and **Ringpis-Liban,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 20 2017 3:30 p.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J:

I concur with the conclusion reached by my respected colleague as to the timely filing of petitioner Belle Corporation's ("BC") administrative and judicial claims for refund as well as to its entitlement to a refund or issuance of a tax credit certificate ("TCC") for its erroneously paid capital gains tax ("CGT") on its receipt of real property by way of liquidating dividends from Belle Bay City Corporation ("BBCC") in the amount of Php63,249,000.00. However, I am unable to agree with the basis for BC's entitlement to its claim for refund or issuance of TCC.

The facts of the present case show that BBCC was dissolved by virtue of the shortening of its corporate term. BC, as a shareholder of BBCC, received several properties as liquidating dividends through the Deed of Conveyance dated November 12, 2012. In its 2012 Annual Income Tax Return ("ITR"), BC reported as part of its Other Taxable Income Not Subjected to Final Tax the amount of Php413,625,407.00, which represented its net liquidating gain from the liquidating dividends issued by BBCC. This amount was then subjected to the 30%

regular corporate income tax. Meanwhile, in order to secure a Certificate Authorizing Registration for the transfer of properties from BBCC's name to BC's name, BC paid the CGT – subject to refund in the present case – on the presumed gain from the liquidating dividends.

The issue now presented before the Court is whether BC is entitled to a refund of the erroneously paid CGT on the liquidating dividends issued by BBCC. Otherwise stated, the issue in the present case revolves on the proper taxation of the liquidating dividends received by BC.

I humbly submit that yes, BC is entitled to a refund of the erroneously paid CGT on the liquidating dividends issued by BBCC because liquidating dividends are not subject to CGT, but the gain therefrom is subject to the corporate income tax.

Section 73(A) of the 1997 National Internal Revenue Code, as amended (the *"1997 NIRC"*)[1] clearly provides that liquidating dividends received by a shareholder shall be a taxable income or a deductible loss, as the case may be. The relevant provision states:

> 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.[2]

To implement *Section 73(A) of the 1997 NIRC, Revenue Regulations ("RR") No. 06-08*[3] was issued. *Section 8 of RR No. 06-08* provides for the computation of the liquidating gain or loss, and reiterates that the liquidating gain or loss shall be subject to the corporate income tax, thus:

[1] Republic Act No. 8424, as amended (1997).
[2] Underscoring ours.
[3] 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 the property received against the cost of the investment in shares. <u>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</u>. 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.
>
> <u>The capital gain or loss derived therefrom shall be subject to</u> the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to <u>the corporate income tax rate, in case of corporations</u>.[4]

In *Wise & Co. v. Meer*[5], the Supreme Court discussed the nature of a liquidating dividend, to wit:

> The amounts thus distributed among the plaintiffs were not in the nature of a recurring return on stock—in fact, they surrendered and relinquished their stock in return for said distributions, thus ceasing to be stockholders of the Hongkong Company, which in turn ceased to exist in its own right as a going concern during its more or less brief administration of the business as trustee for the Manila Company, and finally disappeared even as such trustee.
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> xxx xxx xxx
>
> 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

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[4] Underscoring ours.
[5] No. 48231, June 30, 1947, 78 Phil. 655.

> 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.

Meanwhile, in *Fernando v. Lim*[6], the Supreme Court had occasion to rule on the taxability of liquidating dividends - both on the part of the liquidating corporation or income payor and on the part of the shareholder corporation or income payee - in this wise:

> 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, <u>on the part of the stockholder, any gain or loss is subject to tax</u>, <u>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 stockholder because said transaction is not treated as a sale</u>.[7]

For its part, respondent has consistently ruled that in case of liquidation, the liquidating corporation is exempt from corporate income tax, creditable withholding tax, and documentary stamp tax considering the transfer of such liquidating corporation's assets to its shareholders in exchange for the latter's surrender of the shares is not a sale; while the shareholder corporation's liquidating gain (*i.e.*, the

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[6] G.R. No. 176282, August 22, 2008, 563 SCRA 147.
[7] Underscoring ours.

difference between the adjusted cost of the shares and the fair market of the properties given as liquidating dividends) is subject to ordinary income tax rates and not to the CGT on the sale of shares.[8]

In case of dissolution, therefore, the rule is: the liquidating corporation shall not be subject to corporate income tax; however, the gain or loss of the shareholder corporation receiving liquidating dividends shall be subject to corporate income tax.

Applying the foregoing principles to the present case, BBC, as the liquidating corporation, is not subject to income tax on the transfer of the liquidating dividends to its shareholders. Meanwhile, BC, as the shareholder corporation of BBCC, correctly included its liquidating gain in its 2012 Annual ITR under the item Other Taxable Income Not Subjected to Final Tax, which was then subjected to the corporate income tax. Having paid the liquidating gain, it was erroneous for BC to again pay income tax in the form of CGT on the liquidating dividends. Considering BC timely filed its administrative and judicial claims for refund within the two-year period under *Section 204(C) in relation to Section 229 of the 1997 NIRC*, BC is thus entitled to its claim for refund or credit of erroneously paid CGT on the liquidating dividends it received from BBCC.

In view of the foregoing discussion, I vote to grant the present Petition for Review. BC is entitled to its claim for refund or issuance of TCC on the erroneously paid CGT on its receipt of real property by way of liquidating dividends from BBCC in the amount of Php63,249,000.00.

LOVELL R. BAUTISTA
Associate Justice

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[8] *See BIR Ruling No. 363-14* dated September 22, 2014; *BIR Ruling [DA-(C-291) 716-09]* dated November 27, 2009; *BIR Ruling [DA-(C-272) 683-09]* dated November 20, 2009; *BIR Ruling [DA-(C-065) 224-09]* dated May 8, 2009; *BIR Ruling No. 039-02* dated November 11, 2002.