REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1396** (CTA Case No. 8741)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
SARA LEE KIWI HOLDINGS, LLC., Respondent.	***Promulgated:*** FEB 13 2017 1:45 p.m.

x - x

DECISION

UY, *J.*:

This Petition for Review[1] was filed on December 21, 2015 before the Court *En Banc* by petitioner, Commissioner of Internal Revenue against respondent, Sara Lee Kiwi Holdings, LLC., seeking the reversal of the Decision dated September 4, 2015[2] and Resolution dated November 25, 2015[3], promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8741, entitled *"Sara Lee Kiwi Holdings, LLC., Petitioner, vs. Commissioner*

[1] EB Docket, pp. 5 to 15.
[2] EB Docket, pp. 17 to 30.
[3] EB Docket, pp. 32 to 34.

of Internal Revenue, Respondent," the dispositive portions of which respectively read as follows:

Decision dated September 4, 2015:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **Fifty-Seven Million Eight Hundred Twenty-Nine Thousand Six Hundred Pesos and 50/100 (Php57,829,600.50)** representing erroneously paid donor's tax.
>
> **SO ORDERED.**"

Resolution dated November 25, 2015:

> "**WHEREFORE,** premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Sara Lee Kiwi Holdings, LLC. is a non-resident foreign corporation, organized and existing under, and by virtue of the laws of the State of Delaware, U.S.A., with office address at 400 South Jefferson Street, Chicago, Illinois, 60607, United States (formerly at 3500 Lacey Road, Downer's Grove, Illinois, 60615, United States of America).

On April 4, 2011, respondent sold its entire holdings and interest, consisting of 1,460,736 common shares and subscription rights in Sara Lee Household Care (Philippines), Inc., (SLHCPI) to S.C. Johnson & Son, Inc. (SC Johnson) for the price of Three Million

Eight Hundred Seven Thousand Euros (€3,807,000.00) or Two Hundred Thirty-Five Million Two Hundred Ninety-One Thousand Two Hundred Fifty-Four Pesos and 30/100 (₱235,291,254.30).

On May 4, 2011, respondent filed a Capital Gains Tax Return on the said sale, showing a net capital loss of One Hundred Ninety-Two Million Seven Hundred Sixty-Five Thousand Three Hundred Thirty-Four Pesos and 75/100 (₱192,765,334.75), computed as follows:

Taxable Base — For Cash Sale	₱235,291,254.30
Less: Cost and Other Allowable Expenses	428,056,589.05
Net Capital Gain/(Loss)	(₱192,765,334.75)

On December 5, 2011, respondent filed a Donor's Tax Return with the BIR and paid the Donor's Tax due in the amount of Fifty-Seven Million Eight Hundred Twenty-Nine Thousand Six Hundred Pesos and 50/100 (₱57,829,600.50).

On June 11, 2012, respondent and SC Johnson executed an Amendment Agreement (to the Deed of Absolute Sale of shares of Stock and Assignment of Subscription Rights dated April 4, 2011), whereby both parties agreed to an upward adjustment in the purchase price, in the amount of Nine Hundred Thirty-Five Thousand Three Hundred Ninety-Nine Euros (€935,399.00) or Fifty Million Five Hundred Fifty-Eight Thousand Eight Hundred Seventy-Seven and 19/100 (₱50,558,877.19), as additional purchase price. This increased the purchase price to Two Hundred Eighty-Five Thousand Eight Hundred Fifty Thousand One Hundred Thirty-One Pesos and 49/100 (₱285,850,131.49).

On June 19, 2012, because of the increase in the purchase price and a consequent decrease of capital loss, respondent amended its Donor's Tax Return, showing an overpayment of Fifteen Million One Hundred Sixty-Seven Thousand Six Hundred Sixty-Three Pesos and 23/100 (₱15,167,663.23).

Thereafter, on July 20, 2012, respondent filed a claim for refund of the purported overpaid donor's tax amounting to ₱15,167,663.21, citing Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

On November 26, 2013, respondent amended its application for tax refund, requesting the refund of the entire donor's tax paid on December 5, 2011 in the amount of ₱57,829,600.50, allegedly representing capital loss arising from the sale of shares of stock of SLHCPI to SC Johnson.

In order to meet the two-year prescriptive period for filing a claim for refund or issuance of tax credit certificate, respondent filed a *Petition for Review* before the Court in Division on December 4, 2013. The case was docketed as CTA Case No. 8741.

Among respondent's arguments is that the sale did not result in a capital loss because the book value of the shares sold is lower than the selling price thereof as per SLHCPI's Audited Financial Statements as of June 30, 2011. It further claimed that the sale is a *bona fide* transaction and at arm's length between independent and distinct entities, who are not related parties, and that the resulting capital loss was merely a consequence of the negotiation between them.

Respondent added that it has no reason to understate the selling price because had the sale resulted in a capital gain, such gain is not subject to capital gains tax under Article 14 of the Tax Treaty between the Republic of the Philippines and the United States of America. Even assuming that capital loss is subject to donor's tax, it is still allegedly entitled to the refund of the excess donor's tax erroneously paid to petitioner in the amount of ₱15,167,663.21, under the doctrine of *solutio indebiti*, because of the upward adjustment in the selling price of the shares of stock agreed upon by the parties. Moreover, the quantum of proof required in its claim for refund is allegedly preponderance of evidence, and that it has clearly shown its entitlement to a refund.

In his *Answer* filed on January 30, 2014 in CTA Case No. 8741, petitioner interposed the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 6. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> 7. Petitioner's claim for the issuance of tax refund/tax credit certificate is subject to administrative investigation/examination by respondent's Bureau;

M

8. Taxes paid and collected by the BIR are presumed to have been paid in accordance with law, rules and regulations and the burden to prove otherwise is incumbent upon the petitioner;

9. Section 100 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:

> *"**SEC.100. Transfer for Less than Adequate and Full Consideration.** – Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.'*

10. Section 100 does not require donative intent since its purpose is to close any avenue for tax avoidance by encompassing all transactions where there is a disparity in the consideration. It is indicative or a strong proof however, that a gratuity is intended, thus, ordinarily transfer for insufficient consideration is deemed gift;

11. Additionally, Revenue Regulations No. 6-2008 provides that:

> ***'SEC. 7. Sale, Barter or Exchange of Shares of Stock Not Traded Through a Local Stock Exchange Pursuant to SECs. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) of the Tax Code, as amended. —***
>
> xxx xxx xxx
>
> *(c.1) **Determination of Selling Price**. — In determining the selling price, the following rules shall apply:*
>
> xxx xxx xxx
>
> *(c.1.4) In case the fair market value of the shares of the stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock*

mf

> *sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended."*

12. Revenue Memorandum Circular (RMC) No. 25-2011 dated March 2, 2011 applies squarely to this case. The above-cited provisions of law do not admit of any exceptions, thus, in the absence of doubt or ambiguity, their application is in order;

13. In an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund."

On February 7, 2014, respondent filed its Reply[4] to petitioner's Answer to refute petitioner's statement therein denying the allegations under the heading "Nature of the Case" of the Petition for Review in CTA Case No. 8741 for being false because the truth according, to herein petitioner, is that there is no Section 7(a)(2) in Republic Act No. 1125, as amended because said Section as amended by Section 7 of Republic Act No. 8292 now reads as follows:

"Sec. 7. Jurisdiction. – The CTA shall exercise:

"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

"1. Xxx

"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 of other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code

Xxx xxx xxx"

After the Pre-trial conference held on March 13, 2014, the parties submitted their *Joint Stipulation of Facts and Issues* on March

---

[4] Reply dated February 7, 2014, Division Docket (CTA Case No. 8741) – Vol. I, pp. 114-115

28, 2014[5], which the Court adopted in its Pre-Trial Order promulgated on April 8, 2014[6].

In support of its claim for refund, respondent presented the following witnesses: Atty. Antonio Cardiño, former Corporate Secretary of respondent; Dolores G. Gallo, Accountant of A.M. Sison, Jr. and Partners; Benito S. Villocillo, Liaison Officer of A.M. Sison, Jr. and Partners; and Reydante E. Roque, Liaison Officer of A.M. Sison, Jr. and Partners.

For its part, petitioner's counsel manifested during the hearing held on June 16, 2014[7] that petitioner would no longer present evidence in CTA Case No. 8741 and will instead submit the instant case for decision. Thus, as directed by the Court in Division[8], respondent filed its *Memorandum* on September 5, 2014, while petitioner filed his *Memorandum* on October 7, 2014. Thereafter, CTA Case No. 8741 was submitted for decision in the Resolution dated October 10, 2014[9].

In the assailed Decision dated September 4, 2015,[10] the Court in Division ruled in favor of respondent, and granted the latter's Petition for Review, ordering petitioner to refund in its favor the amount of ₱57,829,600.50, representing erroneously paid donor's tax. It found that the sale by respondent of the SLHCPI shares is not subject to donor's tax, since the fair market value thereof did not exceed the value of the consideration.

Petitioner then filed a *Motion for Reconsideration* on September 23, 2015,[11] to which respondent filed its *Comment/Opposition* on October 8, 2015.[12] In the assailed Resolution dated November 25, 2015,[13] the *Motion for Reconsideration* was denied by the Court in Division for lack of merit.

---

[5] Division Docket (CTA Case No. 8741) – Vol. I, pp. 331-333
[6] Division Docket (CTA Case No. 8741) – Vol. I, pp. 335-339
[7] Minutes of the hearing held on June 16, 2014, Division Docket (CTA Case No. 8741) – Vol. I, p. 344
[8] Ibid.
[9] Division Docket (CTA Case No. 8741) – Vol. II, p. 574
[10] Division Docket (CTA Case No. 8741)–Vol. II, pp. 587-600; EB Docket, pp. 17 to 30.
[11] Division Docket (CTA Case No. 8741) – Vol. II, pp. 601 to 606.
[12] Division Docket (CTA Case No. 8741) – Vol. II, pp. 610 to 613.
[13] Division Docket (CTA Case No. 8741) – Vol. II, pp. 615 to 617; EB Docket, pp. 32 to 34.

Petitioner filed a *Motion for Extension of Time to File Petition for Review* on December 11, 2015,[14] which was granted by the Court *En Banc* in the Resolution dated December 16, 2015, giving petitioner a final and non-extendible period of fifteen (15) days from December 12, 2015, or until December 27, 2015, within which to file his *Petition for Review*.[15] Subsequently, the instant *Petition for Review* was filed on December 21, 2015.[16]

Without necessarily giving due course to the instant Petition for Review, respondent was ordered by the Court *En Banc* to file its *Comment* thereon.[17] Thus, respondent filed its *Comment (Re: Petitioner's Petition for Review)* on March 21, 2016.[18]

Thereafter, the instant *Petition for Review* was submitted for decision on April 20, 2016.[19]

Hence, this Decision.

ASSIGNMENT OF ERROR

In the instant *Petition for Review*, petitioner assigns following error, to wit:

> "The Second Division erred in finding that Respondent was able to substantiate and establish its entitlement to a refund of erroneously paid donor's tax from its sale of shares of stock to S.C. Johnson & Son, Inc. and ordering the refund of ₱57,829,600.50."[20]

Petitioner's arguments:

Petitioner argues that respondent must prove whether the amount to be refunded was indeed erroneously or illegally collected by the BIR.

---

[14] EB Docket, pp. 1 to 3.
[15] EB Docket, p. 4.
[16] EB Docket, pp. 5 to 15.
[17] Resolution dated March 7, 2016, EB Docket, pp. 46 to 47.
[18] EB Docket, pp. 48 to 51.
[19] EB Docket, pp. 53 to 54.
[20] EB Docket, p. 8.

According to petitioner, based on the illustration of Revenue Regulations (RR) No. 6-2008, the fair market value of the SLHCPI shares sold should be the book value based on the Audited Financial Statements nearest to the date of sale. In this connection, petitioner points out that the shares of stock were sold on April 4, 2011; that SLHCPI's accounting period employed in keeping its books of accounts is on a fiscal year basis as shown by its Audited Financial Statements for the fiscal year ended June 30, 2011; and the book value of the shares of stock of SLHCPI should be determined based on its financial statements for fiscal year 2010, since its audited financial statements for fiscal year 2011 is non-existent as of the date of the sale.

Petitioner stresses that even respondent used the prevailing valuation before the sale as the fair market value because it was an honest valuation on its part; that the Audited Financial Statements for the fiscal year ended June 30, 2011 should not be utilized since the valuation stated there came after the sale; that the book value of SLHCPI shares had already drastically dropped as a result of the sale transaction of April 4, 2011; and that more importantly, said valuation was yet non-existent at the time of the sale transaction.

Moreover, petitioner contends that the rule is when a taxpayer claims a refund, the court is required to conduct a formal trial (trial *de novo)* to prove every minute aspect of the claim; and that the rule is that the best evidence under the circumstance must be adduced to prove the allegations in a complaint or petition.

Lastly, petitioner emphasizes that it is settled that tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

Respondent's counter-arguments:

Respondent counter-argues that the Audited Financial Statements of SLHCPI as of June 30, 2011 is nearest to the date of sale of its shares of stock.

According to respondent, reliance by petitioner on the illustration under RR No. 6-2008 is misplaced because the sale of shares of stock of SLHCPI does not fall squarely with such illustration as the latter is being premised on different assumptions. *First*, the accounting period employed by SLHCPI in keeping its books of accounts is on a fiscal year basis whereas the illustration assumes a calendar year basis. *Second*, the Deed of Absolute Sale of SLHCPI shares on April 4, 2011 was amended thru an Amendment Agreement while the illustration assumes no amendment. And *third*, the illustration under RR No. 6-2008 made no assumption that an interim audited or unaudited financial statements (*i.e.*, June 30 of every year in case of a calendar year) may be used in the determination of the nearest date to the date of sale.

Respondent contends that an "unaudited" statement of financial position was never mentioned in the aforecited RR; and that the argument of petitioner that the SLHCPI's "unaudited" statement of financial position shall be used as the basis for the determination of the fair market value of SLHCPI shares is not supported by the said RR.

Respondent further avers that RR No. 6-2008 provides that, in the determination of the book value of shares of stock not listed and traded in the local stock exchanges, financial statements duly certified by an Independent Certified Public Accountant (ICPA) or audited financial statements nearest the date of sale are needed and not "unaudited" statements of financial position.

Even assuming, for the sake of argument, that the book value of SLHCPI shares should be determined based on its audited financial statements for fiscal year 2010, the sale of SLHCPI shares will still allegedly result in a "capital gain". This is because as reflected in the comparative SLHCPI's audited financial statements prepared by an independent CPA firm, SGV & Co., for fiscal year ended June 30, 2011, the book value of the shares as of June 30, 2010 is only ₱9,278,925, which is much lower than the book value of the same shares in June 30, 2011, which amounted to ₱21,832,204. Thus, the result will be even higher capital gain and with more reason that sale is not subject to donor's tax.

Lastly, respondent points out that the audited financial statements of SLHCPI as of June 30, 2011 audited by an independent CPA firm, SGV & Co., is the one nearest to the date of sale of SLHCPI's shares of stock on April 4, 2011 and the amendment thereof on June 11, 2012.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Section 28 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[21] provides the rules on the taxation of the sale of shares of stock held as capital asset by foreign corporations, to wit:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.—*
>
> (A) *Tax on Resident Foreign Corporations. —*
>
> xxx xxx xxx
>
> (7) *Tax on Certain Incomes Received by a Resident Foreign Corporations. —*
>
> xxx xxx xxx
>
> (c) *Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange.* — A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:
>
> Not over P100,000............................ 5%
> On any amount in excess of P100,000... 10%
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporations. —*
> xxx xxx xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporations. —*
> xxx xxx xxx
>
> (c) *Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange.* — A final tax at the rates

---

[21] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:

Not over P100,000............................ 5%
On any amount in excess of P100,000... 10%
xxx xxx xxx."

For the effective enforcement of the foregoing provisions, RR No. 06-2008[22] was promulgated by the Secretary of Finance, upon recommendation of petitioner. Section 7 thereof provides, in part, as follows:

"SECTION 7. *SALE, BARTER OR EXCHANGE OF SHARES OF STOCK NOT TRADED THROUGH A LOCAL STOCK EXCHANGE PURSUANT TO SECS. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) OF THE TAX CODE, AS AMENDED.* —

(a) *Tax Rate.* — The provisions of Sec. 39(B) of the Tax Code, as amended, notwithstanding, a final tax at the rates prescribed below is hereby imposed on the sale, barter or exchange of shares of stock not traded through the Local Stock Exchange pursuant to Secs. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(b)(5)(c) of the said Tax Code, as amended.

Amount of Capital Gain	Tax Rate
Not over Php 100,000...	5%
On any amount in excess of Php 100,000............	10%

(b) *Tax Base.* — The tax imposed in Subsection (a) above shall be upon the net capital gains realized during the taxable year from the sale, barter, exchange or disposition of shares of stock, except shares sold or disposed of through the Local Stock Exchange which is covered by the provisions of Secs. 5 and 6 above.

[22] SUBJECT: CONSOLIDATED REGULATIONS PRESCRIBING THE RULES ON THE TAXATION OF SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF SHARES OF STOCK HELD AS CAPITAL ASSETS.

(c) *Determination of Amount and Recognition of Gain or Loss. —*

(c.1) *Determination of Selling Price.* — In determining the selling price, the following rules shall apply:

> (c.1.1) In the case of cash sale, the selling price shall be the total consideration per deed of sale.
>
> xxx xxx xxx
>
> (c.1.4) In case the **fair market value of the shares of stock** sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, **the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended.**

(c.2) *Definition of 'fair market value' of the Shares of Stock.* — For purposes of this Section, 'fair market value' of the shares of stock sold shall be:

xxx xxx xxx

> (c.2.2) **In the case of shares of stock not listed and traded in the local stock exchanges**, **the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale shall be the fair market value.**
>
> *Illustrations. —*
>
> (i) Assume that Ms. Girl Cantillep sold on October 31, 2008, 100 shares of stock of 'A Corporation'. The corporation's accounting period consistently employed in keeping its books of accounts is on a calendar

ᵖᴴ

year basis. In this case, the book value of the shares of stock of 'A Corporation' shall be determined based on its audited financial statements for the calendar year 2007 since its audited financial statements for the calendar year 2008 is yet nonexistent as of the date of sale.

(ii) Assume that Ms. Mape Sison sold on March 31, 2008, 100 shares of stock of 'B Corporation'. The corporation likewise uses calendar year basis accounting period. In this case, the books of accounts of 'B Corporation' have already been closed and adjusted for Calendar Year 2007, but the independent Certified Public Accountant has yet to issue the audited financial statements for said calendar year 2007 which financial statements together with the annual income tax returns are due to be filed on or before April 15, 2008.

In this particular case, the book value of the shares of stock of 'B Corporation' shall tentatively be based on the financial statements for Calendar Year 2007 yet to be audited and not on the audited financial statements of Calendar Year 2006. Once the 2007 audited financial statements have been issued, adjustment to the book value shall be made for the difference.

(c.3) *Determination of Gain or Loss from Sale or Disposition of Shares of Stock.* — The gain from the sale or other disposition of shares of stock shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized. The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received, if any.

(c.3.1) *Basis for Determining Gain or Loss from Sale or Disposition of Shares of Stock.* — **Gain or loss from the sale, barter or exchange of property, for a valuable**

> **consideration, shall be determined by deducting from the amount of consideration contracted to be paid, the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any.**

xxx xxx xxx." *(Emphases and underscoring supplied)*

Based on the foregoing, the net capital gains realized by the seller/vendor/transferor from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation (except shares sold or disposed through the stock exchange) are subject to a final tax at the rate of 5% for the first ₱100,000.00, and at the rate of 10% on the amount of said net capital gains in excess of the said ₱100,000.00. The said net capital gains are the excess of *"the amount of consideration contracted to be paid"* by the buyer/vendee/transferee over the *"vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any"*.

However, in addition to the said final tax, should the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the said fair market value of the shares of stock sold, bartered, or exchanged over the amount of money and/or fair market value of the property received as a consideration, if any, shall be deemed a gift and therefore subject to the donor's tax in accordance with Section 100 of the NIRC of 1997, to wit:

> "SEC. 100. *Transfer for Less Than Adequate and Full Consideration.*— Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

The fair market value of the shares of stock sold, bartered, or exchanged is its book value as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of the sale.

What is involved in this case is the determination whether there is a deemed donation in the sale of respondent of its entire holdings and interest in SLHCPI.

The Audited Financial Statements of SLHCPI for fiscal year ended June 30, 2011, being the nearest to the date of sale, must be used to determine the fair market value of its shares of stock.

In this case, the crux of the controversy is the resolution of whether the Audited Financial Statements of SLHCPI for the fiscal year ended June 30, 2011 should be used to determine the book value of the subject shares of stocks. Petitioner argues that what should be referred to for the said purpose is the Audited Financial Statements of the prior year, *i.e.*, for the fiscal year ended June 10, 2010.

We do not agree with petitioner.

The above-quoted Section 7(c.2.2) of RR No. 6-2008, which has the force and effect of law and are entitled to great weight,[23] is clear on matter, *i.e.*, the financial statements to be utilized, for purposes of determining the fair market value of the shares of stocks not listed and traded in the local stock exchanges to be sold, bartered, or exchanged , are that which are *"duly certified by an independent public accountant"* and *"nearest to the date of sale"*.

It is undisputed that the date of the sale of the subject shares of stocks is April 4, 2011.[24] Thus, it is plain that as between the Audited Financial Statements of SLHCPI for the fiscal year ended June 30, 2010 and that for the fiscal year ended June 30, 2011,[25] the latter Audited Financial Statements are the nearest to the said date of sale.

We do not agree with petitioner's contention to the effect that based on the illustration of RR No. 6-2008 [referring to Illustration No. "(i)" of Section 7(c.2.2) thereof], the fair market value of the SLHCPI

---

[23] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[24] Exhibit "P-8", Division Docket (CTA Case No. 8741) – Vol. I, pp. 414 to 417.
[25] Exhibit "P-18", Division Docket (CTA Case No. 8741) – Vol. I, pp. 475 to 507.

nd

shares of stock sold should be the book value based on its Audited Financial Statements for the fiscal year ended June 30, 2010. This must be so because, as correctly pointed out by respondent, the factual milieu in the said illustration is not in all-fours with the instant case. Thus, the same must not be applied thereto.

Furthermore, to adhere to the said illustration over the clear mandate of Section 7(c.2.2) that the audited financial statements must be *"nearest to the date of sale"*, would create an absurd situation wherein an illustration prevails over the clear provision of the law it intends to exemplify. *Apropos*, courts are not to give words meanings that would lead to absurd or unreasonable consequences.[26]

As a corollary, We do not subscribe to petitioner's contention, still on the basis of Illustration No. "(i)" of Section 7(c.2.2) of RR No. 6-2008, to the effect that since SLHCPI's Audited Financial Statement for the fiscal year ended June 30, 2011 is non-existent as of the date of sale, the same cannot be used as reference to determine the fair market value of SLHPCI's shares of stock. This is so because the unavailability or the non-existence of the audited financial statements nearest to the date of sale, under RR No. 6-2008, does not necessarily warrant reference to the audited financial statements for the preceding fiscal year or calendar year for the fair market value of the subject shares of stock. This is clearly supported by Illustration No. "(ii)" of the same Section 7(c.2.2), wherein resort to **tentative** financial statements nearest to the date of sale can be had, subject to the later adjustment to the book value of the shares of stock indicated in the **audited** financial statements for any difference.

Correspondingly, the Court in Division is correct when it used or referred to the Audited Financial Statements of SLHCPI for fiscal year ended June 30, 2011 to determine the fair market value of the latter's shares of stock; and when it found that the sale by respondent of the SLHCPI shares is not subject to donor's tax.

Thus, We find no reversible error committed by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The assailed Decision dated September 4, 2015 and the assailed Resolution dated

---

[26] *The Secretary of Justice, et al. vs. Koruga*, G.R. No. 166199, April 24, 2009.

ny

November 25, 2015, both rendered by the Court in Division in CTA Case No. 8741 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen R - L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice