REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ECO LEISURE AND HOSPITALITY HOLDING COMPANY, INC,
Respondent.

CTA EB NO. 1013
(CTA CASE NO. 8347)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 14 2014 9:08 a.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by the Commissioner of Internal Revenue appealing the Decision dated January 4, 2013 and the Resolution dated May 2, 2013 issued by the former First Division[1] of the Court of Tax Appeals in CTA Case No. 8347, entitled *Eco Leisure and Hospitality Holding Company, Inc. vs. Commissioner of Internal Revenue*, which granted Eco Leisure and Hospitality Holding Company Inc.'s claim for refund representing its erroneously paid documentary stamp tax (DST) in the total amount of **THREE MILLION SIXTY-SIX THOUSAND EIGHT HUNDRED TWENTY-THREE and 75/100 PESOS (Php3,066,823.75).** OM

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[1] Composed of Associate Justice Erlinda P. Uy as Acting Chairperson and Associate Justice Esperanza R. Fabon-Victorino.

THE FACTS

Eco Leisure and Hospitality Holding Company, Inc. (ECO) is engaged in the business of investing in, purchasing, developing or otherwise acquiring real or personal property. It is duly organized and existing under Philippine laws, with principal office at Unit 1108, Tektite West Tower, Exchange Road, PSE Center, Ortigas, Pasig City.[2]

The Commissioner of Internal Revenue (CIR) is empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit arising under the National Internal Revenue Code (NIRC). She holds office at the BIR National Office Building, Diliman, Quezon City.[3]

Biscom, Inc. is a Philippine corporation, with principal place of business at 6/F Legaspi Towers 200, Paseo de Roxas, Legaspi Village, Makati City.[4]

Hotel Enterprises of the Philippines, Inc. (HEPI) is a Philippine corporation, with principal place of business at 2702 Roxas Boulevard, Pasay City.[5]

On September 17, 2009, Biscom, Inc., through a Deed of Absolute Sale, sold 93,727 common shares of stock of HEPI to ECO for a consideration of ₱911,545,000.00. The subject shares have par value of ₱1,000.00 each, or a total par value of ₱93,727,000.00.[6]

On October 8, 2009, ECO filed the Documentary Stamp Tax (DST) Return and paid DST in the amount of ₱3,418,300.00 for the purchase of 93,727 common shares of stock of HEPI.[7] The total purchase price of ₱911,545,000.00 was used as tax basis in computing the DST on the sale of HEPI shares.

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[2] Assailed Decision, *Rollo*, p. 25.
[3] *Id.*, pp. 25 – 26.
[4] *Id.*, p. 26.
[5] *Id.*
[6] *Id.*
[7] *Id.*

On March 26, 2010, ECO filed a claim for refund or issuance of tax credit certificate (TCC) for its alleged overpaid DST in the amount of ₱3,066,823.75 with Revenue District Office (RDO) No. 051 of the BIR.[8] The amount of ₱3,066,823.75 represents the difference between the DST based on the total par value and the DST actually paid by ECO which was computed based on gross purchase price,[9] *viz.*:

Total par value (93,727 x ₱1,000)	₱	93,727,000.00
DST Rate (₱0.75/₱200)		0.375%
DST Due	₱	351,476.25
DST Paid based on purchase price	₱	3,418,300.00
Difference (Amount being claimed)	**₱**	**3,066,823.75**

There being no final action taken by the CIR on ECO's claim for refund or issuance of TCC, ECO filed a Petition for Review before the Court in Division on October 5, 2011.[10]

In her Answer, the CIR insists, among others, that pursuant to the National Internal Revenue Code of 1997 (1997 NIRC), the DST on sale of shares shall be computed based on the total purchase price of ₱911,545,000.00 which is higher than the total par value of shares in the amount of ₱93,727,000.00.[11]

ECO filed its Reply and alleged, among others, that the DST on the said sale of shares should be computed based on the total par value of the shares sold.[12]

As aforestated, the Court in Division issued the assailed Decision[13] granting ECO's petition for review and directing the CIR to refund or issue a tax credit certificate, in favor of ECO, in the total amount of THREE MILLION SIXTY-SIX THOUSAND EIGHT HUNDRED TWENTY-THREE and 75/100 PESOS (Php3,066,823.75), for its erroneous overpayment of DST.

[8] *Id.*
[9] *Id.*, p. 31.
[10] *Id.*, p. 26.
[11] *Id.*, pp. 26 – 27.
[12] *Id.*, pp. 27 – 28.
[13] *Id*, pp. 25 - 34.

Aggrieved, the CIR filed a Motion for Reconsideration[14] on January 30, 2013 which was, however denied by the Court in Division in the assailed Resolution.[15]

Hence, the CIR filed the subject Petition for Review[16] before the Court *En Banc* on June 6, 2013 wherein the CIR raises the following error allegedly committed by the Court in Division:

> "THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND/TAX CREDIT IN THE AMOUNT OF ₱3,066,823.75, AS ALLEGED OVERPAYMENT OF DOCUMENTARY STAMP TAX ON ITS PURCHASE OF 93,727 COMMON SHARES OF STOCK OF HOTEL ENTERPRISES OF THE PHILIPPINES, INC. (HEPI) FROM BISCOM, INC."[17]

THE PARTIES' ARGUMENTS

The CIR contends that pursuant to Revenue Regulations No. 2-82, as amended, the DST on the sale of shares of stock is computed based on the gross selling price and not on the total par value. The CIR avers that in computing the DST due on the sale of shares, the tax base should be their total selling price of ₱911,545,000.00 and not their total par value of ₱93,727,000.00. Thus, ECO's DST payment in the amount of ₱3,418,300.00 for the purchase of 93,727 common shares of stock of HEPI was not erroneous.

ECO, on the other hand, counters that the Court in Division correctly held that the DST on the sale of shares is based on the par value thereof and not on the purchase price of the shares. ECO also argues that under the basic principle of *solutio indebiti*, the CIR is obligated to issue a refund or tax credit certificate to ECO for the amount of ₱3,066,823.75 representing the DST erroneously remitted to the BIR.

THE RULING OF THE COURT *EN BANC*

To simplify, the sole issue to be resolved by the Court *En Banc* is whether or not the DST should be computed based on the gross purchase

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[14] *CTA First Division Docket,* pp. 389-396.
[15] *Rollo,* pp. 36-40.
[16] *CTA First Division Docket,* pp. 5-18.
[17] Petition for Review, June 6, 2013, *Rollo*, p. 8.

price or the total par value of the HEPI shares of stock acquired by ECO from Biscom, Inc.

The Court *En Banc* finds the CIR's arguments without merit.

The applicable law, as correctly cited by the Court in Division, is Section 175 of the 1997 NIRC, as amended by Republic Act (RA) No. 9243 (An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes), which states:

> **"TITLE VII**
> **DOCUMENTARY STAMP TAX**
>
> xxx xxx xxx
>
> **SEC. 175. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock.** — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, **there shall be collected a documentary stamp tax of Seventy-five-centavos (P0.75) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such stock**: *Provided*, That only one tax shall be collected on each sale or transfer of stock from one person to another, regardless of whether or not a certificate of stock is issued, indorsed, or delivered in pursuance of such sale or transfer: and *Provided, further,* That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock." (*Emphasis supplied*)

Revenue Regulations No. 13-04 was issued to implement the provisions of RA No. 9243. Section 4 of Revenue Regulations No. 13-04 states:

> "SECTION 4. New Rate of DST on Sales, Agreements to Sell, Memoranda of Sales, and Subsequent Transfer of Shares of Stocks. —
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> > 'SEC. 175. Stamp tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock. — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stock in any association, company, or corporation,

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> or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, there shall be collected a documentary stamp tax of **Seventy-five centavos (P0.75) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such stock:** *Provided,* That only one tax shall be collected on each sale or transfer of stock from one person to another, regardless of whether or not a certificate of stock is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, That in case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock.'
>
> Section 175 of the Code used to be Section 176 with the old tax rate of DST applicable on sales, agreements to sell, memoranda of sales, deliveries, or transfer of shares or certificates of stock is now revised from One peso and fifty centavos (P1.50) on each Two hundred Pesos (P200) to "Seventy-five centavos (P0.75) on each Two hundred pesos (P200)," or fractional part thereof, of the **par value of such stock**. Likewise, the documents described as "due bills" and "certificates of obligation", which were previously included in the old section, have been removed from the coverage of this renumbered and amended Section." (Emphasis supplied)

The law *vis-à-vis* the pertinent revenue regulations is clear and unequivocal. In computing the DST due on the sale of HEPI shares of stock acquired by ECO from Biscom, Inc., the tax base is the total par value of the shares, and not their gross purchase price.

The CIR's reliance on Revenue Regulations No. 02-82 in arguing that the tax base for DST purposes should be the gross purchase price is misplaced. Truth to tell, Revenue Regulations No. 02-82 is not the applicable revenue regulations as it deals with the taxation of gains derived from sale of shares of stocks classified as capital assets, specifically, the imposition of stock transaction tax (percentage tax) on sale of shares of stock listed and traded through a local stock exchange and the imposition of capital gains tax on sale shares of stock (classified as capital assets) which are not traded through a local stock exchange. In addition, Revenue Regulations No. 02-82 has been repealed by Revenue Regulations No. 006-08[18] which was issued to harmonize and consolidate the rules relative to the imposition of stock transaction tax for the sale, barter, exchange or other disposition of shares of stock of domestic corporation that are listed and

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[18] Issued on April 22, 2008.

traded through the Local Stock Exchange, or disposition of shares through Initial Public Offering (IPO), and capital gains tax for the disposition of shares not traded through the Local Stock Exchange (classified as capital assets).

There being no reversible error committed by the Court in Division in this case, the Court *En Banc* finds no cogent reason to reverse and set aside the assailed Decision promulgated on January 4, 2013 and the assailed Resolution dated May 2, 2013 in CTA Case No. 8347 entitled "*Eco Leisure and Hospitality Holding Company, Inc. vs. Commissioner of Internal Revenue*."

WHEREFORE, in light of the foregoing principles, the *Petition for Review* filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated January 4, 2013 and its Resolution dated May 2, 2013 in CTA Case No. 8347, entitled *Eco Leisure and Hospitality Holding Company, Inc. vs. Commissioner of Internal Revenue*, which granted Eco Leisure and Hospitality Holdings Company, Inc. claim for refund representing its erroneously paid Documentary Stamp Tax in the total amount of **THREE MILLION SIXTY-SIX THOUSAND EIGHT HUNDRED TWENTY-THREE and 75/100 PESOS (Php3,066,823.75)** is hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice