REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PREMIUM LEISURE CORP. (FORMERLY: SINOPHIL CORPORATION),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8940

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 14 2017
4:28 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This is a Petition for Review[1] filed on November 28, 2014 by Premium Leisure Corp. (formerly: Sinophil Corporation) to seek the refund or the issuance of tax credit certificate (TCC) in the amount of ₱6,522,000.00, allegedly representing capital gains tax erroneously remitted by petitioner arising from its receipt of real property by way of liquidating dividend from Belle Bay City Corporation (BBCC).

STATEMENT OF FACTS

Petitioner Premium Leisure Corp. is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with

[1] Docket, Vol. I, pp. 6-21.

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 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.[2]

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.

Petitioner is the registered holder of 74,027,418 shares of the capital stock of BBCC.[3] On January 27, 2005, the Securities and Exchange Commission approved BBCC's Amended Articles of Incorporation[4], 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[5] 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[6] 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[7] and Documentary Stamp Tax Declaration/Return[8]

---

[2] Exhibits "P-1"and "P-1-a", Docket, Vol. I, pp. 489-500; Par. 1.1, Joint Stipulation of Facts and Issues, Docket, Vol. I, pp. 303-304.
[3] Exhibit "P-3", Docket, Vol. II, p. 509.
[4] Exhibits "P-4" and "P-4-a", Docket, Vol. II, pp. 510-519.
[5] Exhibit "P-5", Docket, Vol. II, pp. 520-524.
[6] Exhibit "P-6", Docket, Vol. II, pp. 525-527.
[7] Exhibit "P-7", Docket, Vol. II, p. 528.
[8] Exhibit "P-8", Docket, Vol. II, p. 529.

without having remitted or paid any corresponding withholding tax or documentary stamp tax.

In its 2012 Annual Income Tax Return[9], 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[10] with the Land Bank of the Philippines (LBP), Baclaran Branch and paid under protest[11] 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[12] 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)[13], 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, Paranaque 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

[9] Exhibit "P-9", Docket, Vol. II, pp. 530-537.
[10] Exhibits "P-10", "P-10-a", "P-11", and "P-11-a", Docket, Vol. II, pp. 541-542.
[11] Exhibits "P-12", "P-12-a", and "P-12-b", Docket, Vol. II, pp. 543-548.
[12] Exhibit "P-14", Docket, Vol. II, pp. 556-560.
[13] Docket, Vol. I, pp. 102-107.

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[14] on March 9, 2015. In the Resolution[15] 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[16] was set on June 9, 2015. Petitioner filed its Pre-Trial Brief[17] on June 4, 2015; while respondent's Pre-Trial Brief[18] was filed

[14] Docket, Vol. I, pp. 109-122.
[15] Docket, Vol. I, pp. 132-135.
[16] Notice of Pre-Trial Conference, Docket, Vol. I, pp. 136-137.
[17] Docket, Vol. I, pp. 138-153.

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[19] on June 18, 2015. The Pre-Trial Order[20] was issued on August 7, 2015.

Petitioner filed its Formal Offer of Evidence[21] 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.[22]

In the Resolution[23] 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.[24]

Petitioner filed its Memorandum[25] on March 15, 2016; while the Memorandum for Respondent[26] 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.[27]

ISSUES

The parties submitted the following issues[28] for this Court's disposition:

1. Whether or not the transfer of real property 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 TCC to recover the 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

---

[18] Docket, Vol. I, pp. 298-301.
[19] Docket, Vol. I, pp. 303-310.
[20] Docket, Vol. I, pp. 334-339.
[21] Docket, Vol. I, pp. 474-488.
[22] Records Verification dated October 13, 2015, Docket, Vol. II, p. 561.
[23] Docket, Vol. II, pp. 563-564.
[24] Minutes of the hearing dated February 16, 2016, Docket, Vol. II, p. 566.
[25] Docket, Vol. II, pp. 569-599.
[26] Docket, Vol. II, pp. 600-604.
[27] Docket, Vol. II, p. 607.
[28] Joint Stipulation of Facts and Issues, Docket, Vol. I, p. 307.

3. Whether or not petitioner has legal capacity to sue.

RULING OF THE COURT

The Court shall determine first the timeliness of the filing of this Petition for Review.

Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

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

In this regard, 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.

> **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 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]

A review of the records reveals that petitioner paid the amount of ₱6,522,000.00 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 (2) years or until November 28, 2014 within which to file its administrative and judicial claims for refund. Petitioner filed its administrative claim for refund and/or issuance of TCC[32] on April 8, 2014 and its judicial claim[33] on November 28, 2014. Thus, both the administrative and the judicial claims were filed within the two-year prescriptive period.

Petitioner, as withholding agent of BBCC, may file 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.[34] Respondent counters 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.[35]

---

[29] *Commissioner of Internal Revenue vs. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006.
[30] *Manila North Tollways Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012.
[31] Exhibit "P-10", Docket, Vol. II, pp. 541-542.
[32] Exhibit "P-14", Docket, Vol. II, pp. 556-560.
[33] Docket, Vol. I, pp. 6-21.
[34] Docket, Vol. II, p. 591.
[35] Docket, Vol. II, p. 603.

The Court agrees with petitioner.

In the case of *Commissioner of Internal Revenue vs. Smart Communication, Inc.*[36], the Supreme Court held that a withholding agent may file a claim for refund, to wit:

"***Withholding agent may file a claim for refund***

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) provide:

Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –

xxx xxx xxx

(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.

xxx xxx xxx

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

[36] G.R. Nos. 179045-46, August 25, 2010.

> proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

Pursuant to the foregoing, 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.

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:

> 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.

> 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 case of *The Philippine Guaranty Co., Inc. vs. The Commissioner of Internal Revenue, et al.*[37], the Supreme Court discussed the responsibility of 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 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 the case of *Honda Cars Philippines, Inc. vs. Honda Cars Technical Specialist and Supervisors Union*[38], 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

---

[37] G.R. No. L-22074, September 6, 1965.
[38] G.R. No. 204142, November 19, 2014.

> 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 as a person having sufficient legal interest to bring a suit for issuance of TCC or refund of illegally or erroneously collected taxes, because it is considered a "taxpayer" under the NIRC 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 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 TCC and to bring an action for recovery of such claim.

The Court shall now proceed to discuss whether petitioner is entitled to the issuance of TCC or refund of its capital gains tax which entails the determination of whether the transfer of real property by BBCC to petitioner, by way of liquidating dividends, is considered sale and therefore subject to the 6% final withholding capital gains tax prescribed under Section 27(d)(5) of the Tax Code.

Mere distribution of liquidating dividends on account of the dissolution of a corporation is not to be treated as sale for purposes of the imposition of capital gains tax.

Petitioner asserts that it is entitled to a tax refund or issuance of TCC in the amount of ₱6,522,000.00, representing capital gains tax erroneously remitted by petitioner arising from its receipt of real property by way of liquidating dividends since the conveyance of real property by BBCC in favor of petitioner may not be considered as a taxable sale or exchange of properties.[39]

Respondent, on the other hand, argues that capital gains tax is a final tax assessed on the presumed gain derived by BBCC from the disposition of its parcel of land in exchange for common shares of stock owned by petitioner. He claims that it is not essential that a gain must be realized first before a

[39] Docket, Vol. II, p. 584.

corporation may be held liable under Section 27(D)(5) of the Tax Code since gain is presumed from the disposition of its real property considered as capital asset.[40]

The Court finds respondent's arguments to be without merit.

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.* –
>
> xxx xxx xxx
>
> (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.[41] 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.[42]

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

[40] Docket, Vol. II, p. 601.
[41] *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.
[42] *Spouses Mabutas vs. Hon. Lilian B. Hefti, OIC-Commissioner of Internal Revenue*, CTA Case No. 7659, June 3, 2009.

> "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."

Accordingly, for a contract to be valid, it must have three essential elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.[43]

In the case of *Oranbo Realty Corporation vs. The Commissioner of Internal Revenue*[44], 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[45] executed by BBCC as assignor and petitioner as assignee, to wit:

> **"DEED OF CONVEYANCE**
> **(of Real Property as Liquidating Dividends)**
>
> xxx xxx xxx
>
> ACKNOWLEDGES, That –
>
> 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;

[43] *Heirs of Dr. Mario S. Intac, et al. vs. Court of Appeals, et al.*, G.R. No. 173211, October 11, 2012.
[44] CTA Case No. 4820, January 23, 1995.
[45] Exhibit "P-6", Docket, Vol. II, pp. 525-527.

> WHEREAS, the ASSIGNEE is a shareholder of the ASSIGNOR holding approximately Four Percent (4%) of the outstanding capital stock of the latter at the time of its dissolution;
>
> 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;
>
> 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 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:
>
> xxx xxx xxx"

From the foregoing, it is clear that the Deed of Conveyance executed by BBCC, transferring the real property as liquidating dividend in favor of petitioner, was actually effected as a result of BBCC's dissolution.

In the case of the *Heirs of the Late Spouses Aurelio and Esperanza Balite, et al. vs. Rodrigo N. Lim*[46], 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

---

[46] G.R. No. 152168, December 10, 2004.

property is conveyed as a liquidating dividend, the transaction is therefore not subject to capital gains tax.

Moreover, the BIR specifically issued BIR Ruling DA-316-2007[47] on May 29, 2007 in response to BBCC's query as to the taxability of its transfer of the real property as liquidating dividend in favor of petitioner. In BIR Ruling DA-316-2007, the BIR declared 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.

Likewise, in the case of *Victoria Fernando vs. Sps. Reginaldo Lim and Asuncion Lim*[48], 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 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)*

It is important to note that the above-cited decision of the Supreme Court which ruled that the distribution of liquidating dividends as a result of dissolution is not subject to tax, constitute a binding precedent in respect to similar cases. Let it be stressed that only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[49] In

[47] Exhibit "P-5", Docket, Vol. II, pp. 520-524.
[48] G.R. No. 176282, August 22, 2008.
[49] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

the case of *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.* [50], the Supreme 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."

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

BIR Ruling No. 479-2011 is not a general interpretative rule applicable to all taxpayers including petitioner; BIR Ruling No. 479-2011 was issued by the BIR in response to Aguirre Pawnshop Company, Inc.'s request for confirmation.

Respondent contends that BIR Ruling DA-316-2007 secured by BBCC on May 29, 2007, having the same set of facts and issues interrelated to Aguirre Pawnshop Company, 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.[51]

Respondent's contention lacks legal basis.

It must be noted that a BIR ruling contains the official written interpretative opinion of the Commissioner of Internal Revenue **addressed to a particular taxpayer** regarding his taxability over certain matters.[52] Hence, a BIR Ruling could be invoked only by the taxpayer who sought the same.

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[53], the Supreme Court held that BIR Ruling No. 116-98 could be invoked only by ASB Development Corporation, the taxpayer who sought the same, as follows:

[50] G.R. No. 110318, August 28, 1996.
[51] Docket, Vol. II, p. 602.
[52] *Bank of Commerce vs. Commissioner of Internal Revenue*, CTA EB No. 259 (CTA Case No. 6975), September 17, 2007.
[53] G.R. Nos. 163653 and 167689, July 19, 2011.

"Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing **BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same**. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax xxx

xxx xxx xxx

In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. **Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings**." *(Emphases supplied)*

It must be stressed that BIR Ruling No. 479-2011 was issued by the BIR in response to a particular taxpayer, Aguirre Pawnshop Company, Inc.'s request for confirmation. Hence, BIR Ruling No. 479-2011 cannot be considered a general interpretative rule which can be applied to all taxpayers including petitioner.

In the case of *Team Energy Corporation (formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*[54], the Supreme Court ruled that BIR Ruling No.

[54] G.R. No. 197760, January 13, 2014.

DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, as follows:

> "Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.
>
> **BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was, in fact, asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> **Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120-130 day periods are mandatory and jurisdictional.**" *(Emphases supplied)*

Considering that BIR Ruling No. 479-2011 was issued as a response to a query made by a particular taxpayer, Aguirre Pawnshop Company, Inc., the same cannot be considered a general interpretative rule that can be applied to all taxpayers including petitioner.

It is worthy to note that the BIR has issued BIR Ruling DA-316-2007 to specifically address BBCC's request for confirmation regarding the tax implications of its transfer of real property in favor of its stockholders including petitioner.

Furthermore, respondent is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*[55], to wit:

---

[55] G.R. No. 168129, April 24, 2007.

"It is thus apparent that when VAT Ruling No. 231-88 was issued in respondent's favor, the term 'health maintenance organization' was yet unknown or had no significance for taxation purposes. Respondent, therefore, believed in good faith that it was VAT exempt for the taxable years 1996 and 1997 on the basis of VAT Ruling No. 231-88.

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,* this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer.** Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.,* and *Commissioner of Internal Revenue v. Court of Appeals.* The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.

More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer."

It must be recalled that BIR Ruling DA-316-2007 declared the transfer by BBCC of the reclaimed lots to its stockholders as liquidating dividends as not subject to income tax, creditable withholding tax, and documentary stamp tax. On the other hand, BIR Ruling No. 479-2011 denied Aguirre Pawnshop Company, Inc.'s request for confirmation as to the non-taxability of the transfer of properties as liquidating dividend to its shareholder, Marmitz, Inc., for lack of legal basis under the NIRC of 1997, as amended. Undoubtedly, the application of BIR Ruling No. 479-2011 would be prejudicial to petitioner who believed that BBCC's transfer is not subject to capital gains tax.

As explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[56]:

> "The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws."

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[56] G.R. Nos. 167274-75, July 21, 2008.

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 Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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