REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

TRANS-ASIA OIL AND ENERGY DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 9078**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JAN 18 2019 11:42 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration Re: Decision dated 28 September 2018**, filed on October 19, 2018, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated October 18, 2018 of the Honorable Court's Decision dated September 28, 2018)**, filed on November 20, 2018.

Respondent seeks reconsideration of this Court's Decision dated September 28, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment No. DN-2013-00001 dated October 22, 2014 is **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

In the instant motion, respondent argues that the Court erred in ruling that petitioner's declaration and distribution of property dividends is not within the ambit of the term "other disposition of shares of stock" that would recognize gain or loss from such disposal as contemplated in Revenue Regulations (RR) No. 6-2008, as amended by RR No. 6-2013.

Respondent alleges that RR No. 6-2008 and RR No. 6-2013 do not necessarily speak of sale, barter, exchange or other disposition which gives rise to the realization of net capital gains subject to the capital gains tax. Respondent contends that the realization of net capital gains as a result of the distribution of shares of stock is immaterial. Thus, respondent maintains that "other disposition of shares of stock" also covers distribution of shares of stock as property dividend by petitioner.

Also, respondent states that under Section 2 of RR No. 6-2008, "Stock Classified as Capital Assets" is defined as all stocks and securities held by taxpayers other than dealers in securities. As such, respondent contends that the stocks distributed by petitioner to its stockholders as property dividend are classified as capital assets because such stocks were held by petitioner, not as dealer of securities.

Further, respondent maintains that the difference between the total fair market value and the book value of the property dividend should be deemed a gift, which is subject to donor's tax and that the deficiency interest should be calculated from the declaration date. Respondent also posits that Section 100 of the National Internal Revenue Code (NIRC) is applicable in relation to Section 7 of RR No. 6-2008; and the consideration required under Section 100 of the NIRC is the amount of money and/or fair market value of the property received.

Moreover, respondent reiterates that donative intent is not necessary for Section 100 of the NIRC to apply. Respondent alleges that petitioner, even absent donative intent, became an unintentional donor when it distributed shares of stocks as property dividend at a declared value which is lower than the fair market value in accordance with RR No. 6-2013.

Lastly, respondent claims that the assessed deficiency donor's tax has bases in fact and in law, hence, the same should not be cancelled and withdrawn.

In its comment/opposition, petitioner argues that its distribution of property dividends does not fall within the ambit of RR No. 6-2008 and RR No. 6-2013.

Petitioner contends that respondent's assessment was based on Section 7 of RR No. 6-2008, which was subject to the amendment under RR No. 6-2013 and which covers only Sections 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(C), and 28(B)(5)(C) of the NIRC. Petitioner avers that these are the relevant provisions on the sale, barter or exchange of stock not traded through the local stock exchange and it does not in any way mention Sections 34(D)(4)(5), 38, 40 and 127(A)(B) of the NIRC of 1997.

According to petitioner, the term "disposition" referred to in Section 7 of RR No. 6-2008, as amended by RR No. 6-2013, which covers taxes on capital gains arising from sales, barter or exchange, cannot cover dividend distribution. Further, petitioner argues that capital gains tax is due only when income is earned or realized, or in this particular case, net capital gains are or could be generated. Petitioner argues that the word "disposition" as used in Sections 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(C), and 28(B)(5)(C) of the NIRC refers to a transaction which could give rise to realized income on the disposing company and does not apply to all types of transfer or disposition without distinction. Thus, petitioner contends that the term "disposition" referred to in these sections does not and cannot involve a transaction where there is no income or flow of wealth to the taxpayer, such as a property dividend distribution.

Further, petitioner avers that property dividend distribution is likewise not covered by Sections 34(D)(4) and (5), 38, 40 and 127(A) and (B) of the NIRC of 1997 because these provisions involve different kinds of dispositions. According to petitioner, the present case involves distribution of property dividends in the form of common unlisted shares of its wholly-owned subsidiary to its shareholders, the transaction is not a disposition of listed shares which are traded in stock exchange or through initial public offering. Hence, it is a far-fetched argument for respondent to insist that these sections can be used to extend the scope of the term "other dispositions" in assessing petitioner for deficiency donor's tax under Section 7(c.1.4) of RR No. 6-2008, as amended by RR No. 6-2013. Thus, petitioner claims that respondent cannot insist that property dividend distribution is within the ambit of "other dispositions" under the said provisions. Consequently, petitioner alleges that there can be no donor's tax under Section 7(c.1.4) of RR No. 6-2008, as amended by RR No. 6-2013, in relation to Section 100 of the NIRC.

Relative to the foregoing, petitioner posits that Section 100 of the NIRC is not applicable in the case because said provision contemplates a situation where there is a "consideration" received, but such consideration is less than adequate or full. Accordingly, petitioner argues that since the distribution of property dividends is not a "sale, exchange or disposition" contemplated under RR No. 6-2008 or RR No. 6-2013 and no consideration is received by petitioner in declaring such property dividends, the provision imposing donor's tax on any alleged excess of the fair market value of the shares over the selling price, as enunciated in Section 100 of the NIRC and Section 7(c.1.4) of RR No. 6-2008, is not applicable.

Lastly, petitioner reiterates that since petitioner's property dividend distribution is not a disposition contemplated under RR No. 6-2008, as amended by RR No. 6-2013, there can be no basis for the respondent's assessment of donor's tax against petitioner.

Respondent's motion is bereft of merit.

After a careful evaluation of the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

Respondent's arguments in his motion for reconsideration are mere reiteration of his previous arguments in his Answer which have been duly considered and adequately discussed in the assailed Decision.

The Court maintains its ruling that petitioner's declaration and distribution of property dividend is not within the ambit of the term "other disposition of shares of stock" that would recognize gain or loss from such disposal, as contemplated in RR No. 6-2008, as amended by RR No. 6-2013.

The present case involves the declaration and distribution of petitioner's shares of stock/investment in Trans-Asia Petroleum Corporation, a wholly-owned subsidiary of petitioner, as property dividends to its stockholders and after the distribution of which, petitioner still retained majority ownership and control over said subsidiary. As held in the assailed Decision, Paragraph 23 of the International Financial Reporting Standards (IFRS) 10 provides that changes in a parent's ownership in a subsidiary that do not result in the parent losing control of the subsidiary are equity transactions (*i.e.*, transactions with owners in their capacity as owners). Hence, the transaction in this case is a mere equity transaction and no gain or loss is recognized.

Moreover, since there was no consideration given to nor received by petitioner in the distribution of property dividends, which was only declared and distributed out of its earnings or profits, then, Section 100 of the NIRC of 1997, as amended, is not applicable where the transfer of property is for a "consideration" although for less than adequate and full consideration.

Thus, we maintain that there is no inadequacy of consideration in the present transaction. Hence, the assessment of deficiency donor's tax has no basis in fact and in law.

In sum, the Court finds that respondent failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the Court's findings in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 28 September 2018** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice