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:

JUL 20 2017
1:30 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on April 5, 2017 and received by the Court on April 21, 2017, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated 05 April 2017)**, filed on April 21, 2017.

Respondent moves for the reconsideration of the Court's Decision dated March 14, 2017, the dispositive portion of which reads:

> "**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.**"

Respondent contends that capital gains tax is a final tax assessed on the presumed gain derived by BBCC from the disposition of their parcel of land, in exchange of common shares of stock owned by petitioner. 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 (NIRC) since gain is presumed from the disposition of their real property considered as capital asset. He also claims that BIR Ruling DA-316-07 secured by BBCC on May 29, 2007, having the same set of facts and issues interrelated to Aguirre 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.

Petitioner, on the other hand, counters that BBCC's conveyance of real property to it by way of liquidating dividends is not subject to capital gains tax as contemplated under Section 27 (D)(5) of the NIRC and that the Aguirre BIR Ruling is not applicable in this case.

It is worthy to note that the issues and arguments presented are essentially a mere rehash of what have been said and reiterated in their previous pleadings, all of which have been considered, weighed and resolved in the assailed Decision sought to be reconsidered.

As stated by the Court in the assailed Decision, capital gains tax is a tax on the gain from the sale, disposition or conveyance of the taxpayer's real property forming part of capital assets. Absent any sale, disposition or conveyance of real property, the imposition of capital gains tax cannot however, be imposed. In this case, mere distribution of liquidating dividends on account of the dissolution a corporation is not sale for purposes of the imposition of capital gains tax. To reiterate the assailed Decision:

> "Capital gains tax is a tax on the gain from the sale of the taxpayer's property forming part of capital assets. 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.
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> A contract of sale is defined under Article 1458 of the Civil Code, as follows:
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>> '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.

In the case of *Oranbo Realty Corporation vs. The Commissioner of Internal Revenue*, 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 executed by BBCC as assignor and petitioner as assignee xxx

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.

xxx xxx xxx

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

Respondent also claims 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. This issue was also amply discussed by the Court in the assailed Decision, viz: /W

"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*, the Supreme Court ruled that 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, 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.
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> **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.
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> **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.
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> 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.
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> 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.* xxx
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> xxx xxx xxx
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> 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."[1]

Respondent did not advance any compelling reason why the Court should reverse itself on this issue. To reiterate, BIR Ruling No. 479-2011 was issued as a response to a query made by a particular taxpayer, Aguirre Pawnshop Company, Inc., therefore, the same cannot be considered a general interpretative rule that can be applied to all taxpayers including petitioner. Moreover, the application of BIR Ruling No. 479-2011 would be prejudicial to petitioner who relied on BIR Ruling DA-316-07 which ruled that BBCC's transfer is not subject to capital gains tax.

The Court therefore finds respondent's Motion for Reconsideration as not being of sufficient weight to warrant a modification of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration**, is hereby **DENIED** for lack of merit.

[1] Docket, vol. II, pp. 625-627.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice