REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

KEPWEALTH, INC.,
Petitioner,

CTA CASE NO. 10353

-versus-

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 17 2024
3:28 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* filed on September 17, 2020, prays that the assailed Decision issued by respondent Commissioner of Internal Revenue against petitioner for its alleged deficiency donor's tax in amount of ₱98,318,731.68, inclusive of interest and penalties be cancelled, reversed and set aside.[1]

THE PARTIES

Petitioner Kepwealth, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 205-041-890-000.[3] Petitioner's principal office address is at 3-B Country Space I, 133 Sen. Gil Puyat Avenue, Salcedo Village, Barangay Bel-Air, Makati City.[4]

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[1] Summary of the Case, Pre-Trial Order dated March 14, 2022, Docket – Vol. V, p. 2209.
[2] Exhibit "P-1", Docket – Vol. VI, pp. 2745 to 2774.
[3] Par. 1, Stipulated Facts, *Joint Stipulation of Facts* (JSF), Docket – Vol. V, p. 2180; Exhibit "P-2", Docket – Vol. 6, p. 2775.
[4] Par. 1, *Petition for Review*, vis-à-vis par. 1, *Answer (With Special and Affirmative Defenses)*, Docket – Vol. I, pp. 7 and 578, respectively.

Respondent is a public officer duly appointed by the President of the Philippines, and is the head of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees, and charges.[5]

THE FACTS OF THE CASE

On October 27, 2017, petitioner sold its common shares in Kepwealth Property Phils., Inc. (KPPI) to these buyers:[6]

Buyer	No. of Common Shares Sold	Total Purchase Price	Price per Share Sold
Las Tuazon & Sons Realty Inc. (*Las Tuazon*)	356,090 (the *Las Tuazon* shares)	₱8,311,389.84	₱23.34
Crown Castle Holdings.Com, Inc. (*Crown Castle*)	4,795,410 (the *Crown Castle* shares)	₱111,928,225.94	₱23.34

Petitioner then applied for the *Certificate Authorizing Registration* for the sale of its KPPI common shares to *Las Tuazon* and *Crown Castle.* During the CAR processing, respondent, through Revenue District Office No. 49, claimed that petitioner is liable for donor's tax pursuant to Section 100 of the Tax Code[7] because petitioner allegedly sold the Las Tuazon Shares and Crown Castle Shares (Sale Shares) for less than their full and adequate consideration.

On February 20, 2018, petitioner, through Ms. Felicidad V. Razon, received the *Letter of Authority* (LOA), authorizing the examination of petitioner's accounting records for donor's tax for the period "October 27, 2017 to October 27, 2017".[8]

Thereafter, on March 6, 2018, petitioner, through Ms. Kristina Frias, received the *Notice for Informal Conference*, requesting petitioner to offer its explanation or present its objection to the initial findings of respondent.[9]

On July 19, 2018, petitioner received respondent's *Preliminary Assessment Notice* (PAN) dated July 16, 2018. The PAN contains the assessed donor's tax of petitioner in the total amount of ₱85,585,729.48, inclusive of surcharge, interest and penalties, for taxable year 2017.[10]

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[5] Par. 2, *Petition for Review*, vis-à-vis par. 2, *Answer (With Special and Affirmative Defenses)*, Docket – Vol. I, pp. 7 and 578, respectively.
[6] Par. 2, Stipulated Facts, JSF, Docket – Vol. V, pp. 2180 to 2181.
[7] Par. 3, Stipulated Facts, JSF, Docket – Vol. V, p. 2181.
[8] Par. 4, Stipulated Facts, JSF, Docket – Vol. V, p. 2181; Exhibit "R-1", BIR Records – Folder 1, p. 2.
[9] Par. 5, Stipulated Facts, JSF, Docket – Vol. V, p. 2181; Exhibit "R-3", BIR Records – Folder 1, p. 384.
[10] Par. 6, Stipulated Facts, JSF, Docket – Vol. V, p. 2181; Exhibit "P-11", Docket – Vol. II, pp. 792 to 794; and Exhibit "R-5" to "R-7", BIR Records – Folder 1, pp. 407 to 410.

Subsequently, on August 3, 2018, petitioner then filed with the BIR the letter of even date,[11] requesting for the withdrawal and cancellation of the said PAN.

On July 4, 2019, petitioner received the *Formal Assessment Notice* (FAN) dated June 19, 2019 with the *Details of Discrepancies.*[12]

Petitioner then filed with the BIR, on July 31, 2019, the letter of even date (request for reconsideration),[13] requesting for the withdrawal and cancellation of the said FAN.

On August 5, 2020, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated August 3, 2020. The FDDA upheld the donor's tax assessment, inclusive of surcharge, interest and compromise penalty, against petitioner in the amount of ₱98,318,731.68.[14]

On September 17, 2020,[15] petitioner filed the present *Petition for Review.*

Within the extended time granted by the Court,[16] respondent posted his *Answer (With Special and Affirmative Defenses)*,[17] asserting that the Court lacks jurisdiction to entertain the present case, as the *Petition for Review* was filed beyond the prescribed thirty (30)-day period to file an appeal before this Court reckoned from the date of receipt of the FDDA. Hence, according to respondent, the assessment has become final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent also contends that petitioner is liable for donor's tax, amounting to ₱98,318,731.68, inclusive of interests and surcharge, as well as compromise penalty, amounting to ₱100,000.00; and prayed for the dismissal of the *Petition for Review.*

Thereafter, respondent transmitted the *BIR Records* for the present case on December 21, 2020,[18] consisting of two (2) folders.

On January 4, 2021, petitioner filed its *Reply* to respondent's *Answer.*[19]

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[11] Exhibit "P-12", Docket – Vol. II, pp. 796 to 806.
[12] Par. 7, Stipulated Facts, JSF, Docket – Vol. V, p. 2181; Exhibit "P-13, Docket – Vol. II, pp. 812 to 817; and Exhibit "R-9" to "R-12", BIR Records – Folder 1, pp. 431 and 439 to 443.
[13] Exhibit "P-14", Docket – Vol. II, pp. 818 to 827.
[14] Par. 8, Stipulated Facts, JSF, Docket – Vol. V, pp. 2181 to 2182; Exhibit "P-15", Docket – Vol. VI, pp. 2823 to 2826; and Exhibit "R-14", Docket – Vol. 7, pp. 3714 to 3717.
[15] Docket – Vol. I, pp. 6 to 34.
[16] Respondent's *Motion for Extension of Time to File Answer*, and Order dated November 20, 2020, Docket – Vol. I, pp. 571 to 573 and 576, respectively.
[17] Docket – Vol. I, pp. 578 to 587.
[18] *Compliance*, Docket – Vol. I, p. 577.
[19] Docket – Vol. I, pp. 636 to 643.

In the Resolution dated March 12, 2021,[20] the Court denied respondent's prayer to dismiss the present case.

The Pre-Trial Conference was initially set on April 19, 2021,[21] and was reset to June 16, 2021.[22] Respondent's *Pre-Trial Brief* was posted on April 15, 2021;[23] while petitioner filed its *Pre-Trial Brief* on June 14, 2021.[24]

However, during the June 16, 2021 hearing, the parties were instead ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on July 12, 2021, and the Pre-Trial Conference set on said day was cancelled.[25] Thereafter, the PMC-CTA issued the *No Agreement To Mediate* dated July 12, 2021,[26] stating that the parties decided not to have their case mediated. Thus, in the Resolution dated July 15, 2021,[27] the Court set the Pre-Trial Conference anew on September 8, 2021, which was later reset to, and held on, November 22, 2021.[28]

On January 6, 2022, the parties posted their *Joint Stipulation of Facts*,[29] which was approved and adopted by the Court in the Pre-Trial Order dated March 14, 2022.[30]

Trial then ensued, with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following witnesses, namely: (1) Mr. Alan I. Claveria,[31] petitioner's President; (2) Ms. Felicidad V. Razon,[32] petitioner's Treasurer; and (3) Prof. Joselito G. Florendo,[33] petitioner's expert witness to opine on the computation of the book value per share (BVPS) of KPPI's common shares.

[20] Docket – Vol. II, pp. 665 to 674.
[21] Notice of Pre-Trial Conference dated March 12, 2021, Docket – Vol. II, pp. 675 to 676.
[22] Notice of Resetting dated June 16, 2021, Docket – Vol. II, p. 935.
[23] Docket – Vol. II, pp. 925 to 932.
[24] Docket – Vol. II, pp. 936 to 957.
[25] Minutes of the hearing held on, Order, and Resolution dated, June 16, 2021, Docket – Vol. IV, pp. 1721 to 1724.
[26] Docket – Vol. IV, p. 2167.
[27] Docket – Vol. IV, p. 2169.
[28] Notice of Resetting dated October 15, 2021, and Order dated November 22, 2021, Docket – Vol. V, pp. 2170 and 2171, respectively.
[29] Docket – Vol. V, pp. 2180 to 2183.
[30] Docket – Vol. V, pp. 2209 to 2216.
[31] Exhibit "P-27", Docket – Vol. II, pp. 681 to 704; Minutes of hearing held on, and Order dated March 30, 2022, Docket – Vol. V, pp. 2217 to 2218; Exhibit "P-29", Docket – Vol. V, pp. 2224 to 2249; Minutes of hearing held on, and Order dated June 6, 2022, Docket – Vol. VI, pp. 2718 to 2719.
[32] Exhibit "P-28", Docket – Vol. III, pp. 970 to 983; Minutes of hearing held on, and Order dated May 18, 2022, Docket – Vol. V, pp. 2219 to 2220.
[33] Exhibit "P-31", Docket – Vol. IV, pp. 1728 to 1741; Minutes of hearing held on, and Order dated June 6, 2022, Docket – Vol. VI, pp. 2718 to 2719.

Petitioner filed its *Offer of Evidence* on June 24, 2022.[34] Respondent posted its *Comment (to Petitioner's Offer of Evidence dated 24 June 2022)* on July 19, 2022.[35] In the Resolution dated September 20, 2022,[36] the Court admitted petitioner's offered exhibits, except for Exhibits "P-7", "P-7-a", "P-8", "P-8-a", "P-9", "P-9-a", "P-10", and "P-10-a", for failure to submit the originals for comparison.

On October 4, 2022, petitioner then filed its *Motion for Reconsideration*,[37] to which respondent posted his *Comment (Re: Petitioner's Motion for Reconsideration dated 04 October 2022)* on October 14, 2022.[38]

For his part, respondent offered the testimony of Revenue Officer (RO) Karen R. Esparraguerra.[39]

Respondent's *Formal Offer of Evidence* was filed on October 21, 2022.[40] Petitioner posted its *Comment on/Objection to Respondent's Formal Offer of Evidence dated October 21, 2022* on November 3, 2022.[41]

In the Resolution dated January 23, 2023,[42] the Court: (1) granted petitioner's *Motion for Reconsideration*, thereby admitting Exhibits "P-7-a", "P-8", "P-8-a", "P-9", "P-9-a", "P-10", and "P-10-a"; and (2) admitted respondent's offered exhibits.

The *Memorandum for the Petitioner* was filed on March 8, 2023;[43] while respondent filed his *Memorandum* on March 21, 2023.[44]

The present case was submitted for decision on April 18, 2023.[45]

THE ISSUES

The Court is confronted with this main issue: ***"Whether the Petitioner is liable to pay the assessed deficiency Donor's Tax amounting to ₱98,318,731.68, inclusive of surcharge and interests, and Compromise Penalty amounting to Php100,000.00 for taxable year 2017."***

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[34] Docket – Vol. VI, pp. 2720 to 2741.
[35] Docket – Vol. 7, pp. 3678 to 3679.
[36] Docket – Vol. 7, pp. 3688 to 3689.
[37] Docket – Vol. 7, pp. 3693 to 3701.
[38] Docket – Vol. 7, pp. 3719 to 3722.
[39] Exhibit "R-15", Docket – Vol. I, pp. 588 to 603; Minutes of the hearing held on, and Order dated, September 22, 2022, Docket – Vol. 7, pp. 3690 to 3692.
[40] Docket – Vol. 7, pp. 3705 to 3712.
[41] Docket – Vol. 7, pp. 3725 to 3729.
[42] Docket – Vol. 7, pp. 3733 to 3739.
[43] Docket – Vol. 7, pp. 3741 to 3770.
[44] Docket – Vol. 7, pp. 3775 to 3792.
[45] Docket – Vol. 7, pp. 3801 to 3802.

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that the assailed Decision ignores and erroneously fails to apply Revenue Regulations (RR) No. 6-2013 which amended (a) the definition of the fair market value (FMV) of shares of stock not traded and listed through the local stock exchange and (b) the manner of computing the FMV of shares under Section 7(c.2.2) in relation to Section 2(v) of RR No. 6-2008; that even assuming that Section 2(v) of RR No. 6-2008 should still be considered in the computation, the par value of KPPI's preferred shares should not be deducted in computing the FMV of the subject shares of stock (*i.e.*, the *Las Tuazon* and *Crown Castle* shares) because KPPI's preferred shares are not given preference in the distribution of the corporation's assets in case of liquidation; that the assailed Decision upholds a method of computing the FMV of shares which erroneously ignores the fact that KPPI's common shares and preferred shares have equal rights and privileges; and that the assailed Decision erroneously finds that petitioner is subject to donor's tax on its sale of the subject shares of stock, even though there is no deemed gift because the consideration that petitioner received therefor is higher than the FMV thereof computed in accordance with RR No. 6-2013.

Respondent's counter-arguments:

Respondent insists that the Court has no jurisdiction over this case as the *Petition for Review* was filed out of time; that the Supreme Court's (SC's) Administrative Circular (AC) No. 43-2020, as amended by AC No. 43A-2020, finds no application in this case; that petitioner is liable for donor's tax amounting to ₱98,218,731.68, inclusive of interests and surcharge, and compromise penalty amounting to ₱100,000.00; that it was duly notified of the assessment and was accorded due process of law; and that the donor's tax assessment has factual and legal basis.

THE COURT'S RULING

The Petition for Review was timely filed. Hence, the Court has jurisdiction over the case.

Petitioner alleges that at the time it received the FDDA on August 5, 2020, the National Capital Region (NCR) was under the Modified Enhanced Community Quarantine (MECQ), and on the basis of the SC's AC No. 43-2020, with its addendum AC No. 43A-2020, it has until September 17, 2020 within which to file its petition.

Respondent, on the other hand, asserts that the *Petition for Review* was filed out of time, and that SC's AC No. 43-2020, as amended by AC No. 43A-2020, does not apply in this case. According to the respondent, said AC only affected the filing of petitions and other court submissions from August 4 to 18, 2020 as the Court's operations resumed on August 19, 2020. Thus, there is no hindrance for the petitioner to file its appeal before this Court on or before September [4], 2020 or the thirtieth (30^{th}) day from its receipt of the FDDA as provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent's view is without merit. The *Petition for Review* was timely filed.

Apparently, the dispute on the timeliness of filing the present *Petition* arises on the interpretation of the following provision in SC's AC No. 43A-2020 dated August 3, 2020:

> "ADMINISTRATIVE CIRCULAR NO. 43A-2020
>
> xxx xxx xxx
>
> 1. The reglementary periods for filing of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts shall be suspended from 4 to 18 August 2020, and shall resume on 19 August 2020, without prejudice to those who have already filed such pleadings and documents within their reglementary periods. In the same manner, the periods for court actions with prescribed periods are likewise suspended, and shall resume on 19 August 2020.
>
> xxx xxx xxx"

In this Court's Resolution dated March 12, 2021,[46] *We* interpreted the foregoing AC in this wise:

> "At the outset, it is worth mentioning that this Court issued Memorandum dated August 4, 2020 echoing the order of the Supreme Court suspending the reglementary periods from August 4, 2020 to August 18, 2020 and shall resume on August 19, 2020.
>
> This is because the categorical language of Administrative Circular No. 43A-2020 leaves no room for doubt. The **suspension of reglementary period** extends to the filing of all petitions, appeals, complaints, motions, pleadings, and other court submissions without any qualification or reservation. As such, the Court finds itself unable to subscribe to respondent's interpretation

[46] Resolution, Vol. 2, pp. 665-674.

> that the same is only applicable to those filings and submissions that fall due during the period of suspension." *(Emphasis added)*

This Court further ruled as follows:

> Prescinding from the foregoing disquisition, petitioner should be given the fullest opportunity to establish the merits of his appeal considering that what is at stake is a possible deprivation of its property which is one of the fundamental rights protected by our Constitution. As such, the Petition for Review filed on September 17, 2020 is well within the 30-day period fixed by law, reckoned from August 19, 2020, which is the resumption of the reglementary period to file pleadings and other court submissions as provided in the SC Administrative Circular No. 43A-2020. Perforce, the FDDA has not attained finality and the instant case is within the jurisdiction of this Court."

Petitioner received the FDDA on August 5, 2020. At this date, ordinarily, the last day to appeal before the CTA should have been on September 5, 2020. With the promulgation of SC No. 43A-2020, suspending the reglementary period, the 30-day reglementary period to file petition before this Court did not run until August 19, 2020. Thus, counting thirty (30) days from August 19, 2020, petitioner had until September 18, 2020 to file its petition before this Court.

Petitioner filed the present *Petition for Review* on September 17, 2020, which is well-within the adjusted reglementary period pursuant to SC's AC No. 43A-2020. Thus, this Court has jurisdiction over the said *Petition for Review*.

Whether or not petitioner should be held liable for donor's tax

Petitioner alleged that in the assessment of its donor's tax liability, respondent, instead of applying the applicable provision of RR 6-2008 as amended by RR 6-2013, erroneously relied on a repealed provision of RR 6-2008 in its computation of the fair market value of Kepwealth Property Phils. Inc. (KPPI)'s common shares.

On the other hand, respondent claims that the donor's tax assessed against petitioner was based on the findings that petitioner sold shares of stock for less than the adequate consideration, hence, the same shall be considered gift that is subject to donor's tax pursuant to Section 100 of the NIRC of 1997, as amended, in relation to RR No. 6-2008 and RR No. 6-2013; and that since RR No. 6-2013 did not mention the situation wherein the outstanding shares of the company consist of common shares and preferred shares, respondent applied Section 2 (v) of RR No. 6-2008 in the determination of the value per share sold.

In determining whether petitioner is liable for the assessed donor tax, We shall first determine what is the applicable rule in the computation of the subject sale of shares of petitioner.

The amended provisions of RR No. 6-2013 should have been applied by respondent in this case.

Section 100 of the NIRC of 1997, as amended, provides:

> **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 pertinent provisions of Revenue Regulations No. 6-2008, Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or other Disposition of Shares of Stock Held as Capital Assets, dated April 22, 2008, provides:

> **SEC. 2. DEFINITION OF TERMS.** - For purposes of these Regulations, the following definition of words and phrases are hereby adopted:
>
> xxx xxx xxx
>
> (c) **"Shares of Stock"** shall include shares of stock of a corporation, warrants and/or options to purchase shares of stock; as well as units of participation in a partnership (except general professional partnerships), joint stock companies, joint accounts, joint ventures taxable as corporations, associations, and recreation or amusement clubs (such ad golf, polo or similar clubs); and mutual fund certificates.
>
> xxx xxx xxx
>
> (v) **"Book Value per Share"** refers to the value per share computed by dividing the total Stockholder's Equity of a corporation or net assets of the company by the number of outstanding shares or units if participation in a company. In case there are preferred shares as well as common shares, the book value per common share is computed by deducting the liquidation value

of the preferred shares form the total equity of the corporation and dividing the result of the number of common shares outstanding as of balance sheet date. The liquidation value of the preferred shares is equal to the redemption price as of balance sheet date, including any premium and cumulative preferred dividends in arrears.

xxx xxx xxx

SEC. 7. SALE, BARTER OR EXCHANGE OF SHARES OF STOCK NOT TRADED THROUGH A LOCAL STOCK EXCHANGE PURSUANT TO SECS. (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.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:

(c.2.1) XXX

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.

On April 11, 2014, the BIR issued Revenue Regulation No. 6-2013, Amending Certain Provision of Revenue Regulations No. 06-2008 Entitled Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or other Disposition of Shares of Stock Held as Capital Assets.

Section 2 thereof states:

SECTION 2. 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. - Sec. 7 of RR No. 06-2008 is hereby amended to read as follows:

"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.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:
>
> (c.2.1) x x x
>
> (c.2.2) In the case of shares of stock not listed and traded in the local stock exchanges, the value of the shares of stock at the time of sale shall be the fair market value. In determining the value of the shares, the Adjusted Net Asset Method shall be used whereby all assets and liabilities are adjusted to fair market values. The net of adjusted asset minus the liability values is the indicated value of the equity. For purposes of this section, the appraised value of real property at the time of sale shall be the higher of -
>
> (1) The fair market value as determined by the Commissioner, or
> (2) The fair market value as shown in the schedule of value[s] fixed by the Provincial and City Assessors, or
> (3) The fair market value as determined by Independent Appraiser.

The BIR made the following assessments in the Details of Discrepancies attached to the FAN:

Computation of Fair Market Value of Shares of Stocks

Name of Corporation	Buyer	No. of Shares Sold		Fair Market Value per Share		Amount
Kepwealth Property Phils., Inc.	Las Tuazon and Sons Realty, Inc.	356,090	P	63.08	P	22,462,157.20
Kepwealth Property Phils., Inc.	Crown Castle Holdings.com, Inc.	4,795,410		63.08		302,494,462.80
Total					P	324,956,620.00
Total					P	324,956,620.00

Computation of Fair Market Value per Share based on AFS as of 12/31/2016 or Independent Appraisal, which ever is higher

		Per Book/AFS		Per Appraisal		Higher Amount		
Current Assets	P	45,533,582.00	P	45,533,582.00				
Add: Non-current Assets		345,629,591.00		789,000,000.00				
Total Assets	P	391,163,173.00	P	834,533,582.00	P	834,533,582.00	P	834,533,582.00
Less: Total Liabilites								43,222,131.00
Net Worth							P	791,311,451.00
Add: Subscription Receivable								15,000.00
Total Net Worth							P	791,326,451.00
Less: Par Value of Preferred Stock								255,000,000.00
Total Net Worth Atributable to Common Stock							P	536,326,451.00
Divided by: Number of shares outstanding								8,502,500.00
Fair Market Value per Share							P	63.08

In the FDDA, the BIR ruled as follows:

> "We maintained our position that P63.08 is the Fair Market Value per share of stock. The par value of KPPI's preferred shares must be deducted from the adjusted stockholders' equity, and the remaining balance is to be divided by the total outstanding common shares.
>
> xxx xxx xxx
>
> **Nowhere in *RR No. 6-2013* had it deleted any reference to book value of shares as defined under *RR No. 6-2008.***
>
> *RR No. 6-2013* primarily prescribes a new method in determining the fair market value of shares sold, which is the *"Adjusted Net Asset Method"*. **The book value per share as defined in RR No. 6- 2008 is still valid and subsisting**. *RR No. 6-2013* does not delete any reference to book value of shares of stock. In fact, it was explicitly mentioned in the illustration problem in the said Revenue Regulation.
>
> Be it noted that *RR No. 6-2013* amends only certain provision of *RR No. 6-2008*, this does not mean that it superseded the entire provisions of *RR No. 6-2008.*
>
> We cannot assume that *RR No. 6-2013* deleted the *basic* definition of book value per share by not expressly mentioning its definition in the subsequent Revenue Regulation. This only holds true that, the definition of book value per share, is valid and subsisting as defined by RR No. 6-2008 to wit;
>
>> (v) *"Book Value per Share"* refers to the value per share computed by dividing the total Stockholders' Equity of a corporation or net assets of the company by the number of outstanding shares or units of participation in a company. In case there are preferred shares as well as common shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of common shares outstanding as of balance sheet date. The liquidation value of the preferred shares is equal to the redemption price as of balance sheet date, including any premium and cumulative preferred dividends in arrears.
>
> Under the rule on statutory construction, **where a Statute, by its terms, is expressly limited to certain matter, it may not, by interpretation or construction, be extended to other matter** *(expressum facit cessare tacitum).*

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Hence, we hereby disagree to your contention that pursuant to RR No. 6-2013, the method of computing the FMV of KPPI's common shares should be based using the Adjusted Net Asset Method, without any distinction as to whether there are preferred or common shares. Your position that preferred shares were not given preference in the distribution of the assets of the corporation in case of liquidation has no leg to stand on.

xxx xxx xxx

We cannot give credence to your stand that preferred and common shareholders of KPPI enjoy the same rights and privileges. Your contention lacks adequate proof to substantiate its claim. Well- settled in jurisprudence that mere submission of annexes without any documentary support will not be given any merit.

On your contention that KPPI's method of computing the FMV of shares was consistent with accounting rules in calculating the book value of shares where the issuing company has fully participating preferred shares and common shares, RR No. 6-2008 explicitly provides the formula of computing the book value per share which we reiterate as follows;

> (v) *"Book Value per Share"* refers to the value per share computed by dividing the total Stockholders' Equity of a corporation or net assets of the company by the number of outstanding shares or units of participation in a company. In case there are preferred shares as well as common shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of common shares outstanding as of balance sheet date. The liquidation value of the preferred shares is equal to the redemption price as of balance sheet date, including any premium and cumulative preferred dividends in arrears

We cannot deviate from the yardstick given by law. **"Where the law does not distinguish, neither should we distinguish"**.

Thus, where the law does not distinguish preferred shares from fully participating and non-participating preferred shares, neither should we distinguish. In this regard, our method used for the computation of FMV per share was consistent with applicable rules and regulation as provided by RR No. 6-2008, as amended by RR No. 6-2013. Hence, the herein assessment is hereby **reiterated**."

After consideration, the Court finds that respondent erroneously applied the provisions of RR No. 6-2008. Respondent should not use Section 2(v) of RR No. 6-2008 in the determination of the value per share sold, since the sale transaction took place in October 27, 2017, wherein the applicable rule is Section 7 (c.2.2) of RR No. 6-2008, **as amended by RR No. 6-2013**.

Under the amendment by RR No. 6-2013, the fair market value of shares not listed and traded in the local stock exchange shall be the higher of the following:

1) The fair market value as determined by the Commissioner, or
2) The fair market value as shown in the schedule of values fixed by the Provincial and City Assessors, or
3) The fair market value as determined by Independent Appraiser.

Note that in the amended provision, reference to the "**book value**" was deleted, to determine the fair market value of shares not listed and traded in the local stock exchange. The definition of "book value" in Section 2(v) of RR No. 6-2008 is interrelated in the context of Section 7(c.2.2) of RR No. 6-2008. Consequently, Section 2(v) was modified when RR No. 6-2013 amended the fair market value definition of shares not listed and traded in the local stock exchange in Section 7(c.2.2) and required instead that assets and liabilities be adjusted to their fair market value (by using the adjusted net asset method) for purposes of determining the value of shares.

Moreover, Section 3 of RR No. 6-2013 states that "[a]ll revenue issuances or parts thereof inconsistent with the provisions of these Regulations are hereby considered repealed, amended or modified accordingly." This implies that there is no need to refer to Section 2(v) anymore (*i.e.,* definition of book value per share), so as to ascertain the fair market value of shares not listed and traded in the local stock exchange. Instead, the amended Section 7 (c.2.2) of RR No. 6-2013 provides the method of determination.

From all the foregoing, respondent erred in applying the provisions of Section 2(v) of RR No. 6-2008 in computing the fair market value of petitioner's sale of shares of stock in 2017.

There was no transfer for insufficient consideration

The Court shall now determine whether there was transfer for insufficient consideration in the subject sale of shares in KPPI to Las Tuazon & Sons Realty, Inc. and Crown Castle Holdings.Com, Inc., to which petitioner should be held liable for donor's tax.

In the Final Decision on Disputed Assessment ("FDDA"), respondent reiterated its findings in the Formal Assessment Notice ("FAN") and assessed petitioner of deficiency donor's tax and compromise penalty, in the amounts of ₱98,218,731.68 and ₱100,000.00, as shown below:[47]

I. DONOR'S TAX (DN-ELA84505-17-18-0552)		
Taxable Donation		
Add: Adjustments/disallowances		
Transfer for Insufficient Consideration (Sale to La Tuazon and Sons Realty, Inc.)	₱ 14,150,767.36	
Transfer for Insufficient Consideration (Sale to Crown Castle Holdings.com, Inc.)	190,566,236.86	₱ 204,717,004.22
Subtotal		₱ 204,717,004.22
Add: Prior Net Donations during the Calendar Year		-
Total Taxable Donation		₱ 204,717,004.22
Donor's Tax Due (30%)		₱ 61,415,101.27
Less: Tax Credits/Payments		-
Basic Tax Due		₱ 61,415,101.27
Add: Surcharge 25%	₱ 15,353,775.32	
Interest 20% (11.27.2017 to 12.31.17)	1,177,823.86	
Interest 12% (01.01.2018 to 09.30.20)	20,272,031.23	36,803,630.41
TOTAL AMOUNT DUE		**₱98,218,731.68**
II. COMPROMISE PENALTY (MC-ELA84505-17-18-0552)		**₱ 100,000.00**

Respondent's verification disclosed that 356,090 and 4,795,410 shares of the outstanding capital stock of Kepwealth Property Phils., Inc. ("KPPI") with a total book value of ₱22,462,157.20 and ₱302,494,462.80, respectively, were sold by petitioner separately to Las Tuazon and Sons Realty, Inc. and Crown Castle Holdings.com, Inc. through Deeds of Assignment of Shares of Stock executed on October 27, 2017 for less than an adequate total consideration of ₱8,311,389.84 and ₱111,928,225.94, correspondingly. Hence, the difference in the amount of ₱14,150,767.36 and ₱190,566,236.86, as shown below, shall be deemed a gift subject to donor's tax pursuant to Section 100 of the NIRC, as amended,[48] in relation to Section 7 of Revenue Regulations ("RR") No. 06-2008, as amended by RR No. 06-2013:[49]

SCHEDULE 1

Sales to Las Tuazon and Sons Realty, Inc.

Total Fair Market Value of shares of stock sold	₱ 22,462,157.20
Less: Amount of consideration received	8,311,389.84
Value of Shares of Stock Deemed Donated	**₱14,150,767.36**

N

47 Exhibit "P-15", Docket – Vol. VI, p. 2823.

48 Section 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.

49 Exhibit "P-13" (Details of Discrepancies attached to the FAN), Docket - Vol. II, p. 815.

SCHEDULE 2
Sales to Crown Castle Holdings.com, Inc.

Total Fair Market Value of shares of stock sold	₱ 302,494,462.80
Less: Amount of consideration received	111,928,225.94
Value of Shares of Stock Deemed Donated	**₱190,566,236.86**

The total fair market value ("FMV") of shares of stocks sold in the amounts of ₱22,462,157.20 and ₱302,494,462.80 were derived by respondent using the FMV per share of ₱63.08 computed based on the book value per share under Section 2(v) of RR No. 6-2008 in relation to Section 7(c.2.2) of the same regulations, as shown below:[50]

Computation of Fair Market Value of Shares of Stock

Name of Corporation	Buyer	No. of Shares Sold	Fair Market Value per Share	Amount
Kepwealth Property Phils., Inc.	Las Tuazon and Sons Realty, Inc.	356,090	₱63.08	₱ 22,462,157.20
Kepwealth Property Phils., Inc.	Crown Castle Holdings.Com, Inc.	4,795,410	63.08	302,494,462.80
Total				**₱324,956,620.00**

Computation of Fair Market Value per Share based on AFS as of 12/31/2016 or Independent Appraisal, which ever is higher

	Per Book/AFS	Per Appraisal	Higher Amount	
Current Assets	₱ 45,533,582.00	₱ 45,533,582.00		
Add: Non-current Assets	345,629,591.00	789,000,000.00		
Total Assets	**₱391,163,173.00**	**₱834,533,582.00**	**₱834,533,582.00**	₱834,533,582.00
Less: Total Liabilities				43,222,131.00
Net Worth				₱791,311,451.00
Add: Subscription receivable				15,000.00
Total Net Worth				₱791,326,451.00
Less: Par Value of Preferred Stock				255,000,000.00
Total Net Worth Attributable to Common Stock				₱536,326,451.00
Divided by: Number of Share Outstanding				8,502,500.00
Fair Market Value per Share				₱ 63.08

Petitioner, on the other hand, contends, among others, that the assailed Decision erroneously fails to apply RR No. 6-2013, which amended the definition of FMV of shares of stock not traded and listed through the local stock exchange and the manner of computing the FMV of shares under Section 7(c.2.2) in relation to Section 2(v) of RR No. 6-2008; that applying RR No. 6-

[50] *Id.*, at p. 816.

2013, the FMV per sale share is ₱23.26, as computed below; and that there is no deemed gift as contemplated under Section 100 of the Tax Code because the FMV does not exceed the consideration of sale, hence, it should not be subject to donor's tax on its sale of shares:

FMV OF KPPI SHARES USING ADJUSTED NET ASSET METHOD	
Total Assets	₱391,163,173.00
Less: Total Liabilities	43,222,131.00
Equals Shareholders' Equity	₱347,941,042.00
Plus: Net Adjustment	442,901,409.00
Equals **Adjusted Net Assets**	₱790,842,451.00
Divided by Total Number of Preferred Shares and Common Shares Issued and Outstanding	34,002,500
Fair Market Value per Preferred Share and Common Share	₱ 23.26

Petitioner's contentions have merit.

As previously discussed, respondent erred in applying the provisions of Section 2(v) of RR No. 6-2008 in computing the FMV of petitioner's shares of stock sold, since the transaction took place in October 27, 2017, wherein the applicable rule is Section 7(c.2.2) of RR No. 6-2008, **as amended by RR No. 6-2013**.

To reiterate, Section 2 of RR No. 6-2013 states:

> "SECTION 2. 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. —Sec. 7 of RR No. 06-2008 is hereby amended to read as follows:
>
> > '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.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:
> >
> > (c.2.1) x x x
> >
> > (c.2.2) In the case of shares of stock not listed and traded in the local stock exchanges, the value of the shares of stock at the time of sale shall be the fair

market value. In determining the value of the shares, the Adjusted Net Asset Method shall be used whereby all assets and liabilities are adjusted to fair market values. The net of adjusted asset minus the liability values is the indicated value of the equity. For purposes of this section, the appraised value of real property at the time of sale shall be the higher of –

(1) The fair market value as determined by the Commissioner, or

(2) The fair market value as shown in the schedule of valued fixed by the Provincial and City Assessors, or

(3) The fair market value as determined by Independent Appraiser.

Illustrations:

Assume that Mr. X sold on April 30, 2013, 5000 shares of stock of 'A' Corporation. 'A' Corporation has 10,000 outstanding shares The total assets and liabilities of 'A' Corporation in its latest audited financial statements (AFS) are Php20,000,000 and Php5,000,000, respectively. Assuming further that the book value of all its assets and liabilities is also the market value with the exception of its real property. Supposing, the market value of the real properties of 'A' Corporation are as follows:

	Book Value per AFS	MV per Tax Declaration	Zonal Valuation	Independent Appraiser	Highest of the three	Adjustment
Land A	2,000,000	2,500,000	5,000,000	6,000,000	6,000,000	4,000,000
Land B	2,000,000	2,200,000	4,000,000	3,500,000	4,000,000	2,000,000
Building A	1,000,000	2,400,000		3,000,000	3,000,000	2,000,000
Building B	500,000	2,000,000		1,950,000	2,000,000	1,500,000
TOTAL	5,500,000				15,000,000	9,500,000

In the above case, the net asset of 'A' Corporation is Php15,000,000 while the adjusted net asset is Php24,500,000 [(20,000,000 + 9,500,000)- 5,000,000]. As such, with the adjusted value per shares of stock of Php2,450, the fair market value of the shares sold was Php12,250,000 (5000 shares at Php2,450 per share)."

Pursuant to the above provision and following the accompanying illustration thereon, the adjusted net asset method shall be used in determining the value of the shares whereby all assets and liabilities shall be adjusted to FMVs, and the appraised value of real property shall be the highest among the FMVs determined by the Commissioner, or that shown in the schedule fixed by the Provincial and City Assessors, or that determined by Independent Appraiser.

The net of adjusted asset minus the liability values will yield the indicated value of the equity, which shall then be divided by the number of shares outstanding to arrive at the FMV per share.

Here, KPPI's Total Current Assets and Total Liabilities, in the respective amounts of ₱45,533,582.00 and ₱43,222,131.00 are undisputed, as well as the use of the FMV of its Non-current Assets as determined by independent appraiser.

It is to be noted, however, that the ₱789,000,000.00 appraised value of Non-current Assets used by respondent in the assessment is merely the rounded off value of the actual FMV of ₱788,531,000.00 as determined by the independent appraiser per the Valuation Report dated May 17, 2017 prepared by Santos Knight Frank.[51] Verily, the exact FMV of ₱788,531,000.00 shall be used for purposes of computing the adjusted net assets of KPPI.

Meanwhile, the Court finds respondent's inclusion of subscription receivable amounting to ₱15,000.00 in determining KPPI's total net worth to arrive at the fair market value per share improper. Per "Annex 68-K" of the Securities Regulation Code ("SRC") Rule No. 68, as amended, dated February 14, 2002, or the Rules and Regulations Covering Form and Content of Financial Statements, subscription receivable is shown as a deduction from capital stock under the equity section, to wit:

> "ISSUED CAPITAL AND RESERVES
>
> The equity section should be presented in sufficient detail to provide a clear understanding of the capital structure of the corporation and the sources of capital currently in use.
>
> xxx xxx xxx
>
> (18) *Capital Stock (SFAS No. 18)*
> (A) *For each class of capital stock, disclose the following information:*
>
> xxx xxx xxx
>
> (B) **Show the amount, if any, of capital stock subscribed but unissued, and show the deduction of subscriptions receivable therefrom.** Subscriptions receivable collectible within one year may be shown as current assets." *(Emphasis supplied)*

Basically, subscription receivable is not an asset account but an equity account, particularly, a reduction to the stockholder's equity. While those collectible within one (1) year may be presented as a current asset, such

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[51] Exhibit "17" and "P-17-a", Docket – Vol. II, pp. 893 to 920.

presentation is merely optional and there is no showing, in this case, that the subject subscription receivable will be collected within a year. In fact, it is observed that KPPI directly deducted the subscription receivable from the value of its common share equity.

In KPPI's Audited Financial Statements ("AFS") for the year ended December 31, 2016, specifically, the Statement of Changes in Equity,[52] the reflected value of common shares is ₱85,010,000.00. Moreover, it is disclosed in Note 7 – Equity thereof that out of the 8,800,000 common shares authorized, 8,502,500 shares are issued and outstanding, and 8,501,000 shares are paid-up with par value of ₱10.00.[53] Based thereon, the difference between the value of shares issued and outstanding amounting to ₱85,025,000.00 (8,502,500 shares x ₱10.00 par value) and the value of shares paid-up amounting to ₱85,010,000.00 (8,501,000 shares x ₱10.00 par value) is the subscription receivable amounting to ₱15,000.00, which apparently, was already deducted from KPPI's equity since it reflected in its Statement of Changes in Equity the value of paid-up shares of ₱85,010,000.00, and not the value of the shares issued and outstanding.

Anent the number of shares outstanding that shall be considered in computing the FMV per share, since the manner of computing the FMV of shares under RR No. 6-2013 is not based on the book value of shares per Section 2(v) of RR No. 06-2008 and does not make a distinction as to whether the corporation has both common share and preferred share, the same could be said as referring to the total number of preferred shares and common shares outstanding of KPPI. As such, petitioner's use of the 34,002,500[54] total number of shares outstanding in computing the FMV per share is deemed proper.

Considering the foregoing and in accordance with Section 7(c.2.2) of RR No. 6-2008, **as amended by RR 6-2013**, the adjusted net assets of KPPI and the FMV per share amounted to ₱790,842,451.00 and ₱23.26, respectively, computed as follows:

Total Assets		
Current Assets	₱ 45,533,582.00	
Non-current Assets	345,629,591.00	₱ 391,163,173.00
Add: Adjustment in Non-current Assets		
FMV per Independent Appraiser	₱788,531,000.00	
Less: Book Value per AFS	345,629,591.00	442,901,409.00
Adjusted Total Assets		₱ 834,064,582.00
Less: Total Liabilities		43,222,131.00
Adjusted Net Assets		**₱790,842,451.00**
Divided by: Total Number of Outstanding Shares		34,002,500

[52] Exhibit "P-16", Docket – Vol. VI, p. 2838.
[53] *Id.* at p. 2843.
[54] Total of outstanding common shares of 8,502,500 and outstanding preferred shares of 25,500,000 per Note 7 (Equity) of KPPI's Notes to Financial Statements as at and for the year ended December 31, 2016 (Exhibit No. "P-16", Docket – Vol. VI, p. 2843).

FMV per share		**₱ 23.26**

Consequently, the FMV of the shares of stocks sold to Las Tuazon and Sons Realty, Inc. and Crown Castle Holdings.com, Inc. aggregated to ₱119,823,890.00, which is lower than the total consideration received therefor amounting to ₱120,236,615.78, as shown below:

	Las Tuazon and Sons Realty, Inc.	Crown Castle Holdings.Com, Inc.	Total
No. of shares sold	356,090	4,795,410	5,151,500
FMV per share	₱ 23.26	₱ 23.26	₱ 23.26
FMV of shares of stock sold	₱8,282,653.40	₱111,541,236.60	₱119,823,890.00
Less: Amount of consideration received	8,311,389.84	111,928,225.94	120,239,615.78
Difference	**(₱ 28,736.44)**	**(₱ 386,989.34)**	**(₱ 415,725.78)**

Considering that the total amount of consideration for the sale of shares in KPPI to Las Tuazon and Sons Realty, Inc. and Crown Castle Holdings.com, Inc. is higher than the FMV of the same shares sold, there was no transfer for insufficient consideration or deemed gift in such sales that may be subject to donor's tax. Thus, the assessed deficiency donor's tax, in the amount of ₱98,218,731.68, inclusive of surcharge and interests, must be cancelled for lack of merit.

Moreover, the compromise penalty of ₱100,000.00 imposed by respondent pursuant to Revenue Memorandum Order ("RMO") No. 01-90, as amended by RMO No. 007-15, in relation to Section 7(C) and 204(B) of the NIRC of 1997, as amended, in lieu of instituting criminal action under Section 255 of the same Code for the alleged failure of petitioner to file and pay donor's tax under Section 98 thereof, must necessarily be struck down having no leg to stand on. Since there is no deficiency donor's tax to speak of, as found by the Court, there is no basis for the imposition of penalty thereon.

WHEREFORE, premises considered, instant Petition for Review be **GRANTED**. Accordingly, the deficiency donor's tax assessment issued against petitioner for taxable year 2017, inclusive of surcharge, interest and compromise penalty, in the aggregate amount of ₱98,318,731.68, is **CANCELLED and SET ASIDE.**

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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.

MA. BELEN M. RINGPIS-LIBAN
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