REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

TRANS-ASIA OIL AND ENERGY DEVELOPMENT CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9078

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:
SEP 28 2018
3:18 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This Petition for Review filed by Trans-Asia Oil and Energy Development Corporation prays for the cancellation and withdrawal of the assessment that found petitioner liable for alleged deficiency donor's tax arising from its distribution of property dividends to its stockholders of record as of August 5, 2013, including interest and compromise penalty, in the total amount of ₱174,936,138.07.[1]

THE FACTS

Petitioner Trans-Asia Oil and Energy Development Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at 11 Phinma Plaza, 39 Plaza Drive, Rockwell Center, Makati City.[2]

---

1 Summary of the Case, Pre-Trial Order, docket, vol. 3, p. 1454.
2 Par. 1, Statement of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 3, p. 1438.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to rule on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Pursuant to Letter of Authority (LOA) No. 121-2014-00000004 dated March 27, 2014, respondent conducted a tax investigation on petitioner's donor's tax liabilities in relation to its property dividend declaration in 2013.[3]

On July 2, 2014, respondent issued a Preliminary Assessment Notice (PAN), assessing petitioner for alleged deficiency donor's tax in the total amount of ₱150,184,763.90, inclusive of interest and compromise penalty, which the latter received on July 3, 2014.[4] Petitioner protested the PAN on July 18, 2014.[5]

Subsequently, respondent issued a Formal Letter of Demand (FLD) and Assessment No. DN-2013-00001 on October 22, 2014, assessing petitioner for purported deficiency donor's tax in the amount of ₱157,751,612.58, inclusive of interest and compromise penalty. Petitioner received the said documents on October 23, 2014.[6]

On November 21, 2014, petitioner disputed the FLD and Assessment No. DN-2013-00001.[7]

On May 27, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) that denied its administrative protest and upheld the deficiency donor's tax assessment in the amount of ₱174,936,138.07.[8]

As a result, petitioner filed the instant Petition for Review[9] before this Court on June 26, 2015.

Meanwhile, petitioner received a Letter[10] from the BIR dated July 26, 2015 stating that an immediate issuance of a Warrant of Distraint and/or Levy

p

---

3 Par. 3, Statement of Facts, JSFI, docket, vol. 3, p. 1439; Exhibit "R-1", BIR Records, folder 1, p. 403.
4 Par. 4, Statement of Facts, JSFI, docket, vol. 3, p. 1439; Exhibit "R-3", BIR Records, folder 1, pp. 412-414.
5 Exhibit "P-35", docket, vol. 4, pp. 1767-1787.
6 Par. 5, Statement of Facts, JSFI, docket, vol. 3, p. 1439; Exhibits "R-5" and "R-6", BIR Records, folder 1, pp. 452-454 and p. 451, respectively.
7 Exhibit "P-36", docket, vol. 4, pp. 1789-1809.
8 Par. 6, Statement of Facts, JSFI, docket, vol. 3, p. 1439; Exhibit "R-8", BIR Records, folder 1, pp. 493-494.
9 Docket, vol. 1, pp. 10-39.

and Warrants of Garnishment would be made against petitioner for the collection of its deficiency donor's tax. Consequently, on July 29, 2015, petitioner filed before this Court, an "Urgent Motion to Suspend Collection of Taxes and for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction."[11]

In the Answer[12] filed on September 8, 2015, respondent raised the following defenses: that the Property dividend distribution is covered by Revenue Regulations (RR) No. 6-2008 and Revenue Regulations No. 6-2013; that a dividend payable in stock is not synonymous with, and is not always or necessarily, a stock dividend, as where the dividend consist in treasury stocks or in stocks of another corporation; that what the board of directors of petitioner declared was the distribution of shares in its wholly-owned corporation to petitioner's shareholders; that the dividends payable in stock were considered as property dividends, not stock dividends, because such dividends consist of stock of another corporation; that while it is true that in Sections 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) of the 1997 National Internal Revenue Code (Tax Code), capital gains from sale of shares of stock not traded in the Stock Exchange are perceived and shall be taxed. However, with respect to 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) of the Tax Code which are also within the scope of RR No. 6-2008, these Sections pertain to dispositions of capital assets in general, whether or not there is realization of net capital gains; that the realization of net capital gains as a result of the distribution of shares of stock by petitioner is immaterial; that RR No. 6-2008 and RR No. 6-2013 also contemplate any other disposition of shares of stock held capital assets, hence, such disposition also covers distribution of shares of stock as property dividend by petitioner; that the stocks distributed by petitioner to its stockholders as property dividend are classified as capital assets because such stocks were held by petitioner, who is not a dealer in securities; 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;* that the difference between the total FMV and the book value of the property dividend should be deemed a gift which is subject to donor's tax imposed under Sections 98 and 99 of the Tax Code, as amended, in relation to Section 7 (c.1.4) of Revenue Regulation No. 6-2008; that contrary to the contention of petitioner that the amount it paid or remitted by way of final tax should be offset against any donor's tax assessed, it is submitted that no such offsetting should be done because there is no double taxation to speak of in this case; that the declaration date should be the reckoning period in calculating the interest as the right of ownership of the shareholders arises on the dividend declaration date; that the assessed deficiency donor's tax has bases in fact and law, hence the same should not be cancelled or withdrawn; that assessments are presumed

[10] Annex "A", Urgent Motion to Suspend Collection of Taxes and for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, docket, vol. 1, p. 286.

[11] Docket, vol. 1, pp. 275-283.

[12] Docket, vol. 1, pp. 332-344.

correct and made in good faith; that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right; that petitioner has the burden of proving that the assessment of deficiency donor's tax has no factual and legal basis, failure to do so entitles respondent's assessment within presumption of regularity, thus legal and valid.

Petitioner posted a Reply[13] to respondent's Answer on September 21, 2015, which the Court received on October 1, 2015.

In support of its motion to suspend collection of taxes, petitioner presented Ms. Mariejo P. Bautista as its sole witness, and formally offered Exhibits "P-1" to "P-15-1". In a Resolution[14] dated September 22, 2015, the Court admitted the said exhibits, except for Exhibit "P-6" for failure to present the original copy thereof.

On October 12, 2015, the Court granted petitioner's motion to suspend the collection of taxes subject to the posting of a surety bond equivalent to one and one-half times of the amount sought to be collected.[15] Upon compliance with the posting of a surety bond by petitioner, the Court enjoined respondent from enforcing the collection of the assessed donor's tax until final resolution of the case.[16]

Both parties filed their Pre-Trial Briefs[17] on January 14, 2016. Afterwards, the parties submitted their Joint Stipulation of Facts and Issues[18] on January 29, 2016. On March 7, 2016, the Court issued a Pre-Trial Order[19] and terminated the pre-trial.

During trial, petitioner presented Ms. Mariejo P. Bautista and Atty. Salvador Paolo A. Panelo, Jr. as its witnesses. Subsequently, petitioner formally offered its documentary and testimonial evidence, which were all admitted by the Court on August 12, 2016.[20]

On the other hand, respondent presented as his sole witness, Revenue Officer Teresita Villamor. Thereafter, respondent formally offered his

r

---

[13] Docket, vol. 3, pp. 1155-1165.
[14] Docket, vol. 3, pp. 1153-1154.
[15] Docket, vol. 3, pp. 1170-1176.
[16] Resolution dated November 25, 2015, docket, vol. 3, p. 1216.
[17] Docket, vol. 3, pp. 1220-1233 and 1413-1416.
[18] Docket, vol. 3, pp. 1438-1444.
[19] Docket, vol. 3, pp. 1454-1460.
[20] Resolution, docket, vol. 4, pp. 1822-1823.

documentary and testimonial evidence, and the Court admitted the same on November 21, 2016.[21]

On rebuttal, petitioner presented Ms. Teresita Socorro Zuñiga-Dimaculangan and Ms. Yolanda Añonuevo as its witnesses. Afterwards, petitioner formally offered supplemental evidence which were all admitted by the Court on July 21, 2017.[22]

On September 15, 2017 petitioner filed its Memorandum.[23] On the other hand, the Judicial Records Division of this Court issued a Records Verification Report[24] of the dated September 19, 2017, stating that respondent failed to file his Memorandum. In the Resolution dated October 2, 2017[25] the Court declared the case submitted for decision.

THE ISSUE

The main issue in this case is whether or not petitioner is liable for deficiency donor's tax, inclusive of interest and surcharge, amounting to ₱174,936,138.07.[26]

THE ARGUMENTS

Petitioner's Arguments

Petitioner contends that its Board of Directors declared a property dividend in the form of 123,161,310 common shares from its total shareholdings of 249,999,989 common shares in its wholly-owned subsidiary, Trans-Asia Petroleum Corporation (TAPC), to petitioner's shareholders of record as of August 5, 2013. Thereafter, respondent assessed petitioner for donor's tax pursuant to RR Nos. 6-2008 and 6-2013, classifying the declaration and distribution of TAPC's shares to petitioner's stockholders as "other disposition" of shares of stock held as capital assets. Petitioner states that respondent imposed donor's tax on the difference between the fair market value of the TAPC shares declared as property dividend, calculated based on the adjusted net asset method prescribed under RR No. 6-2013, and the book value of such shares. Petitioner argues that the provisions of RR Nos. 6-2008 and 6-2013 apply only to sales, barter, exchange or other disposition which give rise to the realization of net capital gains subject to capital gains tax. It is the

[21] Resolution, docket, vol. 4, pp. 1856-1857.
[22] Resolution, docket, vol. 6, pp. 2748-2749.
[23] Docket, vol. 6, pp. 2755-2802.
[24] Docket, vol. 6, p. 2803.
[25] Resolution, docket, vol. 6, p. 2805.
[26] Issue, JSFI, docket, vol. 3, p. 1440.

stand of petitioner that a determination of the fair market value is relevant in a net capital gains tax calculation because net capital gains is the difference between (a) the gross selling price or FMV of the shares sold, transferred or exchanged, whichever is higher, and (b) the acquisition cost of the shares. Likewise, a gross selling price is allegedly defined as the total amount of money or its equivalent which the purchaser pays the vendor to receive or get the goods. However, petitioner maintains that its declaration and/or distribution of shares as property dividends was not a sale, barter, exchange or other disposition that would give rise to any realized net capital gains on its part, because it received no consideration for such distribution of dividends. Petitioner alleges that respondent mistakenly treated the property dividend distribution as a transfer for less than an adequate or full consideration or with insufficient consideration, and concluded that there was an indirect gift for the difference between the adjusted fair market value as against the book value of the TAPC shares.

Petitioner also claims that a dividend distribution is not a transaction which gives rise to capital gains on the part of a distributing company. Allegedly, it is a distribution of income to shareholders, for which the distributing company does not receive any specific consideration, and thus, the said company would not have gained wealth or realized any capital gains from the transaction. Petitioner explains that what is debited in the books of the distributing company is retained earnings, which is accumulated income after tax or tax-paid income, and not consideration or asset received. Since dividend is a distribution of income from capital, it is the stockholder-investor receiving the dividends which realizes income and not the distributing or investee company. Hence, petitioner asserts that the term disposition referred to in RR Nos. 6-2008 and 6-2013 cannot cover the term dividend declaration/distribution wherein a company distributes profits to its shareholders by parting with an asset without receiving anything in return and which results in a reduction of the company's net worth.

Petitioner insists that the subject donor's tax assessment based on insufficiency of consideration pursuant to RR No. 6-2008 and Section 100 of the Tax Code, is baseless and without merit. Petitioner has cited several rulings[27] of the BIR confirming that a company distributing dividends realizes no taxable income. These rulings recognize that a distribution of dividends does not constitute a sale; thus, it warrants no imposition of capital gains on the distributing company, and that the corporation realizes no taxable income in declaring a dividend among stockholders since it is neither a sale nor an asset used to discharge indebtedness.

[27] BIR Ruling [DA-(C-277) 694-09], dated November 25, 2009 citing *General Utilities and Operating Co. vs. Helvering,* 296 U.S. 200-207; BIR Ruling No. DA-525-07 dated October 4, 2007; and BIR Ruling No. DA-077-98 dated March 12, 1998.

Petitioner further argues that Section 100 of the Tax Code is not applicable in this case, because petitioner has not received any consideration for its declaration of property dividends and the absence of donative intent on its part. Petitioner points out that since the dividends distributed in this case were property dividends and not stock dividends, petitioner could not be said to have received any consideration in return. More so, petitioner submits that no pre-existing liability was extinguished which would deem that a consideration was given.

Moreover, petitioner avers that even assuming for the sake of argument that the declaration of property dividend gave rise to a donation, the deficiency interest should be calculated from the actual distribution date of the dividend and not from the declaration date or the record date.

Respondent's Counter-Arguments

Respondent posits in his Answer that realization of net capital gains as a result of the distribution of shares of stock by petitioner was immaterial. RR Nos. 6-2008 and 6-2013 allegedly cover not only sale of shares of stock, which gives rise to realization of capital gains, but also all other dispositions of shares of stock held as capital assets. Such other disposition also supposedly covers the distribution of shares of stock as property dividend by petitioner. Respondent states that Section 2(a) of RR No. 6-2008 has defined "stock classified as capital assets" as all stocks and securities held by taxpayers other than dealers in securities.

Respondent cites the case of *Philippine Long Distance Telephone Company vs. National Telecommunications Commission,* stating that dividends, regardless of the form these are declared, that is cash, property or stocks, are valued at the amount of the declared dividend taken from the unrestricted retained earnings of corporation. It is likewise ruled in the said case that the value of the declaration in the case of a stock dividend is the actual value of the original issuance of said stocks. According to respondent, the difference between the total fair market value and the book value of the property dividend should be deemed a gift subject to donor's tax pursuant to Section 7(c.1.4)[28] of RR No. 6-2008. Respondent insists that donative intent is not necessary for Section 100 of the Tax Code to apply. Petitioner purportedly became an intentional donor when it distributed shares of stocks as property dividend at a declared value which is lower than that of the fair market value.

---

[28] SECTION 7, c.1.4 - In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended.

Further, respondent argues that final tax should not be offset against the assessed donor's tax as the principle on double taxation cannot be invoked. Respondent claims that there were actually two subjects being taxed: first is the property dividends received by shareholders upon which income tax (final tax) was imposed; and second is the transfer of property by gift upon which donor's tax was imposed. Likewise, the taxpayer subject to income tax for the dividend distribution was allegedly the recipient-stockholder; while the taxpayer subject to donor's tax for the transfer of gift was the donor-corporation.

Moreover, respondent maintains that the declaration date of the property dividend should be the reckoning period for calculating the interest on the deficiency tax as the right of ownership on the said dividend exists upon such declaration date.

THE RULING OF THE COURT

In the FDDA, respondent assessed petitioner for deficiency donor's tax in the amount of ₱174,936,138.07, inclusive of interest and compromise penalty, computed as follows:[29]

Fair Market value per share of TA Petroleum based on Adjusted Net Asset Value (pursuant to RR 6-2013)		₱ 4,493
Less: Book Value/Par Value per share of TA Petroleum declared as property dividend		₱ 1.00
Excess of FMV over BV		₱ 3,493
TA Petroleum # of shares declared/distributed as property dividend		123,161,310 shares
Total amount subject to Donor's Tax (RR 6-2008)		₱ 430,202,455.83
Donor's Tax Rate		30%
Basic Tax Due		₱ 129,060,736.75
Add: Penalties		
20% interest (Aug. 21, 2013 to May 31, 2015)	₱ 45,825,401.32	
Compromise Penalty	50,000.00	45,875,401.32
Total Donor's Tax Due		₱ 174,936,138.07

Based on the said FDDA, the amount of ₱430,202,455.83 subject to donor's tax was derived from the difference between the fair market value per TAPC share of stock based on adjusted net asset value in accordance with RR No. 6-2008, as amended by RR No. 6-2013, and the book value/par value per

[29] Par. 5, Statement of Facts, JSFI, docket, vol. 3, pp. 1439-1440.

share. Respondent presumed that petitioner had gained from the declaration and distribution of its TAPC shares of stock to its shareholders. Respondent also assumed that the declaration and distribution of the said stocks were tantamount to a disposal of shares of stock not traded through a local stock exchange.

Section 7 of RR No. 6-2008 and Section 2 of RR No. 6-2013 provide:

"SECTION 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) *Determination of Amount and Recognition of Gain or Loss.* –

(c.1) *Determination of Selling Price.* – In determining the selling price, the following rules shall apply:

xxx xxx xxx

(c.1.4) In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended.

(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:

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.

xxx xxx xxx

(c.3) *Determination of Gain or Loss from Sale or Disposition of Shares of Stock.* – The **gain from the sale or other disposition of shares of stock** shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized. The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received, if any.

(c.3.1) *Basis for Determining Gain or Loss from Sale or Disposition of Shares of Stock.* – Gain or loss from the sale, barter or exchange of property, for a valuable consideration, shall be determined by deducting from the amount of consideration contracted to be paid, the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any.

xxx xxx xxx

(c.3.1.4) *Acquired for Inadequate Consideration.* – If the property was acquired for less than an adequate consideration in money or money's worth, the basis of such property is the amount paid by the transferee for the property." (*Emphasis supplied*)

"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) xxx

(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 values fixed by the Provincial and City Assessors, or

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

In relation thereto, Section 100 of the 1997 NIRC, as amended states:

"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 following facts material to the resolution of the case are in order.

On July 22, 2013, petitioner's Board of Directors approved a declaration of dividend composed of shares of stock in Trans-Asia Petroleum Corporation (TAP) at the rate of 2.55 TAP shares for every 100 petitioner's shares held, and cash in the amount of ₱0.013 per share to petitioner's shareholders of record as of August 5, 2013, with shareholders residing in the United States receiving cash of ₱0.0385 per petitioner's share in lieu of TAP shares and the ₱0.013 cash dividend;[30] and petitioner made such declaration public by filing a Letter dated July 22, 2013 before the Securities and Exchange Commission (SEC) and Philippine Stock Exchange (PSE).[31]

On August 27, 2013, petitioner requested with the SEC for exemptive relief from the 18-day payment date requirement under Section 6 of the Amended Rules,[32] which the latter approved on September 13, 2013.[33]

As such, petitioner was able to secure from the SEC a Certificate of Filing the Notice of Property Dividend Declaration[34], a Certificate Authorizing Registration No. 201100364018 dated March 27, 2014[35], an Order of Registration[36], and a Stock Transfer Service, Inc. (STSI) Certification[37] dated August 20, 2014.

On September 2, 2013, petitioner requested for computation of taxes due on the cash and property dividends with respondent.[38]

On September 11, 2013, petitioner paid final taxes in the amount of ₱22,406,458.41.[39]

From the foregoing, it shows that petitioner was assessed for deficiency donor's tax because respondent treated the declaration of property dividend

---

[30] Exhibit "P-17", docket, vol. 3, pp. 1265-1270.
[31] Exhibits "P-18", "P-18-a", and "P-19", docket, vol. 4, pp. 1619-1622.
[32] Exhibit "P-20", docket, vol. 3, pp. 1273-1277.
[33] Exhibit "P-22", docket, vol. 3, p. 1279.
[34] Exhibit "P-24", docket, vol. 3, p. 1281.
[35] Exhibit "P-26", docket, vol. 3, p. 1286.
[36] Exhibit "P-27", docket, vol. 4, p. 1641.
[37] Exhibit "P-28", docket, vol. 4, p. 1642.
[38] Exhibit "P-31", docket, vol. 4, p. 1737.
[39] Exhibit "P-33", docket, vol. 4, pp. 1757-1758.

(*i.e.,* the Trans-Asia Petroleum Corporation (TAPC) shares of stock) by petitioner as other disposition of shares of stock held as capital asset. Thus, the alleged inadequacy of consideration in the said transaction was subjected to donor's tax.

Was such declaration and distribution of property dividend by petitioner to its stockholders be considered as "other disposition of shares of stock held as capital asset" as contemplated in RR No. 6-2008, as amended by RR No. 6-2013? If yes, was there an inadequacy of consideration in such distribution of property dividends which will subject petitioner to donor's tax?

Preliminarily, the court finds 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.

Dividend has been defined in Section 73 of the NIRC of 1997, as amended, as follows:

> "SEC. 73. *Distribution of Dividends or Assets by Corporations.* –
>
> (A) *Definition of Dividends.* – The term *'dividends'* when used in this Title means any **distribution made by a corporation to its shareholders out of its earnings or profits** and payable to its shareholders, whether in money or in other property." (*Emphasis supplied*)

The term "dividend" both in the technical sense and its ordinary acceptation, is that part or portion of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock. It means the fund actually set aside, and declared by the directors of the corporation as dividends and duly ordered by the director, or by the stockholders at a corporate meeting, to be divided or distributed among the stockholders according to their respective interests.[40]

Dividends comprise any distribution whether in cash or other property in the ordinary course of business, even though extraordinary in amount, made by a domestic or resident corporation to the stockholders out of its earnings or profits.[41] Property dividend consists of a portion of corporate property paid to shareholders instead of cash or corporate stock.[42]

[40] *Nielson & Company, Inc. vs. Lepanto Consolidated Mining Company,* G.R. No. L-21601, December 28, 1968.
[41] BIR Ruling No. 554-88, November 22, 1988.
[42] Black's Law Dictionary with Pronunciations, Sixth Edition, p. 479.

Petitioner declared and distributed property dividends to its stockholders out of its earnings or profits. The said property dividends distributed were comprised of petitioner's shares of stock/investment in its wholly-owned subsidiary, TAPC, and were recorded in Petitioner's books at its carrying/book value. In recording the property dividends at their carrying/book value, there was no profit or gain realized or recognized in the transaction.

The pertinent portion of the testimony of Petitioner's rebuttal witness, Ms. Ma. Teresita-Socorro Zuñiga-Dimaculangan, on her Judicial Affidavit[43] reads:

"16. Question: In this case, do you know the exact entries made by Petitioner?

Answer: Based on the records of the company, Petitioner recorded this property dividend transaction using as basis the amount of PhP123,161,310.00 which is the **carrying value/book value of the TAPET Shares**

<u>Upon declaration</u>	
Retained Earnings	123,161,310.00
Accounts Receivables-SH	19,784,784.17
Accounts Payable-SH	123,161,310.00
Income Tax Withheld at Source-Final	19,784,784.17
<u>Upon distribution</u>	
Accounts Payable-SH	123,161,310.00
Investment in TAPET Shares	123,161,310.00

17. Question: What is your opinion on these journal entries?

Answer: I believe that the foregoing accounting entries reflect the correct way of recording this property dividend transaction

18. Question: From your perspective as an accounting expert, what income, if any should Petitioner recognize?

[43] Exhibit "P-50", docket, vol. 4, pp. 1884-1892.

Answer: Petitioner, as the company issuing the property dividend, should not recognize income for this transaction. By definition, **a dividend is a distribution of profits of the Company, and not a disposition that results in a capital gain on the part of distributing Company.**

19. Question: What is the basis for your opinion that Petitioner should not recognize income from this transaction?

Answer: Petitioner should not recognize income from this transaction because based on records, it received no consideration or payment for the dividend distribution. Thus, it received no revenue, inflow of wealth or income flow." (*Emphasis supplied*)

Additionally, distribution of property dividends is a non-reciprocal transfer. In other words, there was no consideration given nor received during the transfer. The pertinent portion of the Transcript of Stenographic Notes of the testimony of Ms. Zuñiga-Dimaculangan during her re-direct examination[44] reads:

"ATTY. MATA-PEREZ

You said that this is not a reciprocal transfer, do you mean, did the corporation receive to your knowledge any consideration into the distribution of dividends.

xxx xxx xxx

MS. DIMACULANGAN

None, because in a non-reciprocal transfer, the company or the entity does not sacrifice any resource at all from their end to pay off something, so there is no exchange.

ATTY. MATA-PEREZ

Q Are you saying that the company or the petitioner in this case did not receive any wealth, money or asset from the

[44] TSN dated June 13, 2017, pp. 14-15.

stockholders to whom the dividends were distributed for this particular transaction?

MS. DIMACULANGAN

None at all."

In fact, respondent's witness, Revenue Officer (RO) Teresita Villamor confirmed that petitioner did not receive any consideration for the distribution of its property dividends. The pertinent portion of the Transcript of Stenographic Notes of the testimony of RO Villamor on cross-examination reads:[45]

"ATTY. PATAWARAN

Ms. Witness, from your understanding as a BIR Revenue Officer, does a corporation receive consideration when dividends are issued?

MS. VILLAMOR

Pardon?

ATTY. PATAWARAN

Does a corporation, the issuing corporation does it receive consideration, when it issues dividends to its shareholders? Does it receive something in return from its investors?

MS. VILLAMOR

No, it dispose shares of stocks.

ATTY. PATAWARAN

Thank you Ms. Witness."

[45] TSN dated October 10, 2016, pp. 13-14.

More importantly, 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 subsidiary are equity transactions (*i.e.*, transactions with owners in their capacity as owners).[46]

Records show that petitioner wholly owned TAPC in 2013.[47] When petitioner declared its TAPC shares of stock to its stockholder as property dividends in 2013, it performed reassessment of control in all of its subsidiaries in accordance with the provisions of PFRS 10, to wit:[48]

> "PFRS 10, *Consolidated Financial Statements*
>
> PFRS 10 replaces the portion of PAS 27, *Consolidated and Separate Financial Statements,* that addresses the accounting for consolidated financial statements. xxx. The changes introduced by PFRS 10 will require management to exercise significant judgment to determine which entities are controlled, and therefore, are required to be consolidated by a parent, compared with the requirements that were in PAS 27.
>
> A reassessment of control was performed by the Company on all its subsidiaries in accordance with the provisions of PFRS 10. Following the reassessment, the Company determined that it still controls all of its subsidiaries and that there is no change in the manner of accounting for its associates."

Records likewise reveal that after the distribution of petitioner's property dividends to its stockholders, petitioner has still retained majority ownership and control over its subsidiary TAPC from 100% to 50.74%.[49]

Clearly from all the foregoing, Petitioner's declaration and distribution of property dividends to its shareholders in the form of TAPC shares of stock is not within the ambit of the term "other disposition of shares of stock" in RR No. 6-2008, as amended by RR No. 6-2013. Instead, it is a mere equity transaction since petitioner did not recognize any gain or loss therefrom.

---

[46] PFRS, 2016, A project of PICPA Southern Metro Manila Region, p. 895.

[47] Exhibit "P-30", Note 12 Investments in Subsidiaries and Associates and Interests in Joint Ventures, docket, vol. 4, p. 1692.

[48] Exhibit "P-30", Note 3 Changes in Accounting Policies and Disclosures, docket, vol. 4, p. 1659.

[49] Exhibit "P-37", Note 13 Investments in Subsidiaries and Associates and Interests in Joint Ventures, docket, vol. 5, p. 2575.

Having ruled the same, there can be no inadequacy of consideration to speak of. Therefore, the assessment of deficiency donor's tax has no factual and legal bases to stand on.

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 are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting 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