REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***

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| METRO PACIFIC CORPORATION [now NEO ORACLE HOLDINGS, INC.], Petitioner, | C.T.A. EB No. 1228 (C.T.A. CASE No. 8318) |
| | Present: |
| - versus - | DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: MAY 04 2016 3:20 p.m. |

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**DECISION**

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review dated October 21, 2014 filed by petitioner Metro Pacific Corporation (MPC) [now Neo Oracle Holdings, Inc.], assailing the Decision of the Court in Division dated June 11, 2014, holding it liable for deficiency donor's tax on the excess of the book value over the selling price of Bonifacio Land Corporation (BLC) shares it sold to Columbus Holdings, Inc., (CHI), as well as the Resolution dated September 16, 2014 denying the respective motions for reconsideration of the herein parties.

The following facts are undisputed:

Petitioner is a domestic corporation with address at Unit 9-2, 9/F Net One Center, 26th cor. 3rd Avenue, Bonifacio Global City, Metro Manila.

On the other hand, respondent is the Commissioner of Internal Revenue (CIR) with authority, among others, to decide 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 administered by the BIR. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 29, 2009, petitioner sold to CHI 2,597,197 common shares in BLC with a par value of P100.00 each, for the amount of P410,357,126.00, or P158.00 per share.

On October 30, 2009, petitioner requested respondent for confirmation that its sale of BLC shares of stocks to CHI was not subject to donor's tax pursuant to Section 100 of the NIRC, as amended, as it was an ordinary business transaction negotiated in good faith by unrelated parties for legitimate business purposes.

On November 5, 2009, petitioner filed its returns for Capital Gains Tax (CGT) (BIR Form No. 1707) and for Documentary Stamp Tax (DST) (BIR Form No. 2000-OT) with the Bureau of Internal Revenue BIR Large Taxpayers Service-Regular (BIR LTS-Regular). Petitioner's CGT Return showed no tax due or paid since the transaction yielded a loss given that the taxable base (selling price or fair market value whichever is higher) of P864,295,217.66 was lesser than the declared cost of P1,142,563,358.91 by P278,268,141.25. On the other hand, petitioner's DST Return showed that it paid DST amounting to P973,949.00 on November 5, 2009, which was computed based on a taxable base-shares of stock of P259,719,700.00, multiplied by the tax rate of P0.75/200.

On November 27, 2009, respondent issued BIR Ruling DA (DT-065)715-2009 confirming that the BLC shares sales transaction between petitioner and CHI was not subject to donor's tax as it was an ordinary commercial transaction negotiated in good faith between unrelated parties and motivated by legitimate business reasons. The BIR Ruling

DA (DT-065)715-2009, addressed to petitioner, states in part as follows:

> "Although the sale of the BLC shares by MPC to CHI was made at a price lower than the book value of the shares, this Office is of the opinion that the instant case is an exception to the rule on deemed gift provisions. *First*, the sale was entered into as an ordinary commercial transaction for legitimate business purposes between unrelated parties. *Second*, and more important, the evil sought to be avoided by the law does not exist in the given set of facts. Granting that the selling price is lower than the book value, this is not intended to gain tax advantage due to the fact that the seller will still be in a loss position even if it disposes off the shares at book value because the acquisition cost is much higher than the book value. Hence, there can be no instance where parties can avoid the payment of capital gains tax since the transaction does not yield any gain on the part of the seller.
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> In this connection, various BIR rulings recognize that Section 100 is not absolute and admits of certain exceptions. In BIR Ruling [DA-652-06] dated November 6, 2006 and BIR Ruling No. 033-02 dated August 16, 2002, the BIR ruled that as long as the transaction is conducted at arm's length such that a *bonafide* business arrangement or the dealings are done in the ordinary course of business, a sale for less than an adequate consideration is not subject to donor's tax. Moreover, in BIR Ruling DA-398-95 dated November 14, 1995, the BIR also held that the transfer of 1,000,000 shares in a Philippine corporation for US$1.00 is not subject to donor's tax because there was no intent on the part of the seller to donate. The BIR also ruled that a transaction is not subject to donor's tax under Section 100 of the Tax Code if there is no intention to donate and the transaction is undertaken for a legitimate or bonafide business purpose. (BIR Ruling [DA-(S40M-004)007-08, July 4, 2008; BIR Ruling [DA-075-03], March 11,

> 2003; BIR Ruling [DA-023-02], February 19, 2002. xxx
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> In view of the foregoing, this Office hereby confirms that the difference between the book value and the selling price of the BLC shares is not a taxable donation subject to the 30% donor's tax under Section 99(B) of the Tax Code, in relation to Section 100 of the same Code because it is an ordinary commercial transaction negotiated in good faith between unrelated parties and motivated by legitimate business reasons. Moreover, it has been ascertained that the transaction was intended to avoid the payment of the capital gains tax as the total acquisition cost of the shares is very much higher than their book value.
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> This will therefore serve as a basis for the issuance of the Certificate Authorizing Registration (CAR)/Tax Clearance Certificate (TCC) on the sale of the BLC shares by MPC to CHI and the exemption from donor's tax pursuant to Section 99(B) in relation to Section 100, both of the Tax Code and RR 6-2008.
>
> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void."

The Tax Clearance Certificate[1] and the Certificate Authorizing Registration (CAR)[2] pertaining to the subject sale of BLC shares were issued on December 1, 2009 and December 2, 2009, respectively.

On June 16, 2010, petitioner received from respondent a Notice for Informal Conference dated June 7, 2010, with the information that the subject sale transaction was subject to donor's tax of P184,601,490.61, inclusive of penalties. In view thereof, petitioner, in a letter dated July 1, 2010 and

[1] Exhibit "P"
[2] Exhibit "P-1"

received by respondent on even date, requested for a re-evaluation of the facts it presented and prayed that the tax assessment contained in the Notice be cancelled.

On September 2, 2010, respondent issued the Preliminary Assessment Notice (PAN), with the corresponding details of discrepancy, which petitioner received on September 16, 2010.

On October 11, 2010 or within the extension granted, petitioner filed its protest on the PAN which respondent received on the same date.

In a letter dated October 15, 2010 filed with respondent on October 19, 2010, petitioner requested for the resolution of the legal issue raised in the PAN.

On January 14, 2011, petitioner received from respondent the Final Assessment Notice (FAN) dated January 7, 2011 with Details of Discrepancy and Audit Result/ Assessment Notice No. DT-2010-0001, reiterating respondent's demand for payment of deficiency donor's tax, in the total amount of P199,736,445.50, inclusive of penalties. On the other hand, the Details of Discrepancy recommended the revocation of BIR Ruling No. DA (DT-065)715-2009 issued to petitioner.

On February 14, 2011, petitioner filed its Protest to the FAN which respondent received on the same date.

On April 14, 2011, petitioner submitted to respondent additional documents in support of its Protest.

On June 28, 2011, respondent issued the Final Decision on Disputed Assessment (FDDA) denying petitioner's protest to the FAN which the latter received on July 11, 2011.

On July 11, 2011, petitioner also received from respondent a copy of the letter dated May 18, 2011 revoking BIR Ruling No. DA (DT-065)715-2009 dated November 27, 2009. Together with the letter was Revenue Memorandum Circular (RMC) No. 25-2011 dated March 2, 2011 issued by respondent for the information and guidance of all internal revenue officials, employees and other concerned, declaring the said BIR Ruling as null and *void ab initio*. It reads in part, thus:

> This refers to memorandum dated January 7, 2011 recommending the revocation of BIR Ruling DA (DT-065)715-2009 for lack of factual and legal basis.
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> Section 100 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:
>
>> 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.
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> Furthermore, Revenue Regulations No. 6-2008 provides that:
>
>> 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. -
>> x x x x x x x x x
>>
>> (c.1) Determination of Selling Price. - In determining the selling price, the following rules shall apply:
>> x x x x x x x x x
>>
>> (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 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.

It is noteworthy to state that the above provisions do not mention of any exempt transactions. The above provision is clear and free from any doubt or ambiguity. Hence, there is no room for interpretation. There is only room for application. (Cebu Portland Cement Co. Vs. Municipality of Naga, Cebu, et. Al., G.R. No. 24116-17, August 22, 1968).

x x x x x x x x x

Foregoing considered, the taxpayer's claim for exemption from donor's tax has no legal basis. It is hereby declared that BIR Ruling DA (DT-065)715-2009 dated November 27, 2009 is null and void ab initio as it contravenes a direct provision of the NIRC of 1997.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

All rulings issued upon the effectivity Revenue Regulations (RR) No. 6-2008 which are contrary to or inconsistent with the provisions of the said RR are hereby revoked accordingly.

All revenue officials and employees are enjoined to give this Circular the widest possible publicity.

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

On August 9, 2011, petitioner filed a Petition for Review before the Court in Division praying to (1) reverse the FDDA dated June 28, 2011 issued by respondent and withdraw and/or cancel Assessment Notice No. DT-2010-0001 for deficiency donor's tax; (2) declare Section 7(c.2.2.) of Revenue Regulations No. 06-2008 dated April 22, 2008 as null and void for it is contrary to Section 100 of the NIRC of 1997; and (3) declare RMC No. 25-2011 dated March 2, 2011 as null and void for being in violation of its right to due process; and assuming that RMC No. 25-2011 is valid, it should not to be given retroactive effect.

On June 11, 2014, the Court in Division rendered the assailed Decision, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED for lack of merit. Accordingly, petitioner is hereby ORDERED to PAY respondent deficiency donor's tax in the amount of P170,229,925.14, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:
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> | | | |
> |---|---|---|
> | Basic Tax Due | P | 136,183,940.11 |
> | 25% Surcharge | | 34,045,985.03 |
> | **Total** | **P** | **170,229,925.14** |
>
> In addition, petitioner is ORDERED TO PAY:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency donor's tax of P136,183,940.11 computed 30 days after the gift is made (October 29, 2009 Deed of Absolute Sale) or from November 28, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
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> b) Delinquency interest at the rate of 20% per annum on the total deficiency taxes due of P170,229,925.14 and on the 20% deficiency interest which have accrued as aforestated in a), computed from July 11,

> 2011 (receipt of the FDDA) until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.
>
> SO ORDERED.

The foregoing Decision was effectively affirmed when petitioner's motion for reconsideration was denied, for lack of merit, in the Resolution dated September 16, 2014.

Unfazed, petitioner elevated its case before the Court *En Banc* through the instant Petition for Review.

Petitioner claims that the Court in Division erred in ruling that there was donation in its sale of BLC shares of stocks to CHI pursuant to Section 100 of the NIRC, as amended, since there was less than adequate and full consideration therefor justifying the imposition of donor's tax based on Section 7(c), (c.2.2) of RR No. 6-2008. Petitioner however claims that RR No. 6-2008 is null and void as it equates "fair market value" to "book value" which is not in accord with the law it seeks to implement, namely Section 100 of the NIRC, as amended, which differentiates fair market value with book value.

The recently issued RR No. 6-2013 dated April 11, 2013 which provides that fair market value is "the value of the shares of stock at the time of sale" is allegedly another proof of invalidity of RR No. 6-2008. Since RR No. 6-2008 is invalid, the subject assessment has no legal mooring.

There is likewise no reason to apply Section 100 of the NIRC, as amended, since no donation occurred in the subject sale. Petitioner invokes BIR Ruling No. DA (DT-065) 715-2009 previously issued in its favor declaring the subject sale transaction not subject to donor's tax as it was for value prevailing at the time of the sale, and negotiated in good faith by the parties at arm's length. According to petitioner the said BIR Ruling remains valid notwithstanding its subsequent revocation under Revenue Memorandum Circular (RMC) No. 25-2011. The latter RMC is void for it was issued without giving it the opportunity be heard. Petitioner views RMC No. 25-2011 as not merely an interpretative issuance but adjudicatory in nature, adding to the burden of the taxpayers concerned. Hence, the taxpayer adversely affected should have been heard on the matter. Absent this due process requirement, RMC No. 25-2011 must be considered invalid. In addition, RMC No. 25-2011 was based on similarly invalid RR No. 6-2008, as earlier discussed.

Assuming that the revocation under RMC No. 25-2011 is valid, still the Court erred in holding that it could be retroactively applied in the case of petitioner since Section 246 of the NIRC expressly provides that revocation or reversal of rulings of respondent cannot be retroactively applied. Thus, the conclusion that RMC No. 25-2011 can be given retroactive effect as BIR Ruling No. DA (DT-065)715-2009 is void being an erroneous interpretation of the law, is flawed. This ground is not among the exemptions to non-retroactivity cited in Section 246 of the NIRC.

Further, BIR Ruling No. DA (DT-065)715-2009 is not a ruling of first impression it being the result of a string of BIR rulings, thus, its revocation cannot be retroactively applied. And not being a ruling of first impression, it can be validly issued by an Assistant Commissioner.

Petitioner also denies that there was donation justifying respondent's assessment for donors tax since there was full and adequate consideration for the sale in the amount of P158.00 per share of stocks based on the prevailing market value of the shares. The Deeds of Absolute Sale of similar shares it presented, executed prior to and around the time of the subject transaction, plus the testimonies of its witnesses allegedly established that the selling price of the subject shares was the prevailing rate or their fair market value at the time of sale. Petitioner claims that respondent failed to counter or rebut pieces of evidence it presented.

Petitioner also claims that there was implied approval of the transaction on the part of respondent when the BIR issued a Tax Clearance Certificate (TCC) dated December 1, 2009 and a Certificate Authorizing Registration (CAR) dated December 2, 2009 in its favour after filing its Capital Gains Tax Return (BIR Form No. 1707) indicating a net capital loss on its sale of BLC shares of stock to CHI. Such implied approval is therefore inconsistent with the assessment for gift tax for the subject sale transaction in the amount of P453,946,467.03.

Petitioner as well puts premium on the testimonies of its witnesses allegedly showing that the subject sale of shares was an ordinary business transaction negotiated in good faith by unrelated entities for legitimate business purposes. Petitioner described the sale as a sound business decision dictated only by the obtaining circumstances at that time. Petitioner points out that it had only a minority share of the stocks of BLC, most of which were pledged to CHI and its affiliates. This is not to mention its liabilities due for payment. Petitioner had no shareholding or equity in CHI, and vice versa. Considering that the transaction was at arm's length and for a legitimate business purpose entered into by the parties *sans* any donative intent, Section 100 of the NIRC, as amended, should not be applied.

Also despite clear indication in its CGT, petitioner refuses to agree with the finding of the Court in Division that it admitted in its CGT Return that the fair market value of the subject shares was P332.78 per share or equal to the book value. The figure in its CGT Return would not erase the huge loss it incurred in the sale of the subject BLC shares, it says.

Finally, assuming that the subject assessment is valid, the 25% surcharge, 20% deficiency interest, and 20% delinquency interest should not be imposed for it merely relied in good faith that the sale transaction was not subject to donor's tax by virtue of BIR Ruling No. DA (DT-065)715-2009. In addition, the surcharge and interest are deemed invalid since the assessment from whence they came is as well invalid. A separate assessment for delinquency interest is also required pursuant to Section 247(a) of the NIRC.

Respondent, on the other hand, states that the application of Section 100 of the NIRC imposing donor's tax on petitioner is plainly proper under the obtaining circumstances.

First, BIR Ruling DA (DT-065)715-2009 relied upon by petitioner is null and void having been issued by James H. Roldan, an Assistant Commissioner. Section 7 of the NIRC expressly provides that only the Commissioner of Internal Revenue (CIR) herself can issue rulings of first impression.

Rulings of first impression are rulings, opinions, and interpretations of respondent without established precedents such as BIR Ruling DA (DT-065)715-2009. It is a ruling of first impression for it involves a grant of an exception to the application of Section 100 of the NIRC in relation to RR 6-08. Without any previous ruling on the matter, BIR Ruling DA (DT-065)715-2009 is a ruling of first impression, which could not be issued by an Assistant Commissioner.

Second, BIR Ruling DA (DT-065)715-2009 is void as it contravenes Section 100 of the NIRC, the law it seeks to implement or interpret. Being void, it is not binding upon the BIR. The BIR is not bound by the errors committed by its agents in the collection of taxes.

Third, having been revoked by RMC 25-11, BIR Ruling DA (DT-065)715-2009 no longer has any force and effect. Section 246 of the NIRC clearly provides that any revocation of rulings or circulars promulgated by respondent cannot be given retroactive effect, except when there is a material misrepresentation on the facts made by the taxpayer upon which the revoked rulings is based. In the instant case, there was misrepresentation on the part of petitioner that merited the application of the exception to the non-retroactivity rule.

In its request for confirmation, petitioner claimed that the subject BLC shares were not significant assets and sold for value at a low price. Upon investigation however, it was discovered that the purchase of the BLC shares by CHI was an investment of value since BLC was to develop 150 hectares of prime lands in the Fort Bonifacio Global City into a commercial, residential and recreation area. Further, petitioner represented that the sale of the BLC shares was at arm's length and an ordinary business transaction negotiated in good faith for a legitimate business purpose. On the contrary, the said sale was found to be the consideration for the release of the pledge lien in favor of Evergreen Holdings and Ayala Land, the holding companies of Emerging City Holdings and Berkshire Holdings which in turn, are holding companies of CHI, the buyer. Simply put, the sale of the said shares was part of the indemnity of the petitioner's considerable obligations to Evergreen Holdings and Ayala Land.

In view of the misrepresentations made by petitioner in its request for confirmation, the revocation of BIR Ruling DA (DT-065)715-2009 by RMC 25-11 can very well be given retroactive effect pursuant to Section 246 of the NIRC.

Fourth, on respondent's claim that the Court has no jurisdiction to declare RR 6-08 null and void, Section 1, Rule 63 of the 1997 Rules of Court states that an action questioning the validity of a regulation must be treated as one for declaratory relief and should be brought before the Regional Trial Court. Also, the Court is a specialized court of limited jurisdiction which, pursuant to Republic Act (RA) No. 1125, as amended, can take cognizance of other matters arising under the NIRC, among others. However, these other matters must still be directly related to a disputed assessment, which is not obtaining in the present case.

Respondent also points out that RR6-08 was issued in accordance with her power to interpret tax laws and decide tax cases pursuant to Section 4 of the NIRC. Besides, the Supreme Court had already ruled on the validity of Section 7(c.2.2) of RR 06-08 and declared that it did not alter Section 100 of the NIRC, as amended, but merely set the parameters for determining the "fair market value" of a sale of stocks.

Fifth, on the alleged non-application of Section 100 of the NIRC due to lack of donative intent on the part of the parties to the sale transaction, respondent opines that donative intent is irrelevant. The very purpose of Section 100 of the NIRC is to impose donor's tax for transfers for less than full or adequate consideration. Donative intent is therefore inconsequential if the consideration for such sale is less than full or adequate.

Sixth, by tenaciously invoking BIR Ruling DA (DT-065)715-2009, petitioner is deemed to have admitted the validity of RR 6-2008 which can be equated to an admission that book value of unlisted shares is equal to fair market value, as stated in RR 6-2008.

More telling is petitioner's CGT Returns filed with the BIR and presented to the Court for appreciation. In the said CGT Returns, petitioner impliedly admitted that the fair market value of the subject shares were P332.78 whereas the selling price was only P158.00. This judicial admission is binding on petitioner except when there is palpable mistake, which is not attendant in this case.

In conclusion, respondent firmly states that petitioner's transfer of 2,597,197 common shares in BLC to CHI is subject to donor's tax given that the consideration thereof was less than adequate and full pursuant to Section 100 of the NIRC, and Section 7 of RR 6-08. In the instant case, the BLC shares of stock were sold for P158.00 per share. However, the audited financial statements of BLC as of December 31, 2008 revealed that the book value of the said shares was P332.78 per share. Considering that RR 6-08 states that unlisted shares not traded in the local stock exchanges, shall have a fair market value equal to the book value, the sale of the subject shares were for less than adequate consideration, hence, subject to donor's tax.

Everything told, the main issue in this case is whether the factual circumstance merits the application of Section 100 of the National Internal Revenue Code (NIRC), as amended.

There is no denying that petitioner sold to CHI 2,597,197 shares of stock in BLC for P158.00 per share with a fair market value of P332.78

Schedule I of petitioner's CGT Return pertaining to the subject shares provides that the taxable base would be the selling price or the fair market value, whichever would be higher. In said Schedule, P332.78 per share was declared as the taxable base.

Note that it was petitioner who declared that the taxable base for the said transfer was P332.78 **based from the selling price, or the fair market value, whichever was higher.** The taxable base declared could not possibly be the selling price of P158.00 per share since it was the lower amount. Hence, what was declared by petitioner in its CGT return, executed under pain of perjury, was the taxable base based on the fair market value.

The entry in the CGT Return cannot simply be ignored. It is credible as it emanated from the document executed under pain of perjury by petitioner itself. Since the information was derived from a document that petitioner itself executed and submitted to the Court in evidence, it should be deemed a judicial admission binding upon petitioner.

A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[3] An admission made in the course of the trial, either by verbal or written manifestations, or stipulations, cannot be controverted by the party making such admission; they become conclusive on him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. This doctrine is embodied in Section 4, Rule 129 of the Rules of Court.[4]

Further, the P332.78 per share figure in the CGT Return matches the fair market value per share indicated in the assailed assessment for donor's tax. The fair market value used by respondent was based on the book value of the BLC shares as shown in BLC's financial statements as of December 31, 2008.

Revenue Regulations (RR) No. 6-2008 dated April 22, 2008 provides, 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. -
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> x x x x x x
>
> (c) Determination of Amount and Recognition of Gain or Loss. -
> x x x x x x

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[3] Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014

[4] Canada vs. All Commodities Marketing Corporation, G.R. No. 146141, October 17, 2008

(c.2) Definition of "fair market value" of the Shares of Stock. - For purposes of this section, "fair market value" of the share of stock sold shall be:

x x x x x x

(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.**

x x x x x x (emphasis ours)

Based on Section 7 (c.2.2) of RR No. 6-2008, unlisted shares not traded in the local stock exchange shall have a fair market value equal to the book value. Thus, the fair market value of the subject shares was confirmed in BLC's financial statements as of December 31, 2008 wherein the book value of P332.78 is deemed the fair market value.

In relation to the foregoing, Section 100 of the NIRC, provides, as follows:

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 foregoing provision unequivocally states that if a property, e.g. the subject shares, is transferred for less than an adequate and full consideration, then the amount by which the fair market value exceeded the value of the consideration shall be deemed a gift and subject to donor's tax. In the instant case, the sale value of the shares was P158.00 per share which was less than the fair market value of P332.78 per share. In other words, the Court in Division did not err in affirming the imposition of donor's tax on the sale between petitioner and CHI pursuant to Section 100 of the NIRC, as amended.

Anent petitioner's prayer to declare Section 7(c.2.2.) of RR No. 6-2008 void, suffice it to say that under Sec. 4 of the NIRC, respondent has the power to interpret the provisions of the NIRC and other tax laws, subject to review by the Secretary of Finance.[5] The record is however bereft of any indication that petitioner availed of administrative remedies provided under the rules. Petitioner failed to present any proof that it took remedial action in this regard.

More importantly, even without the BIR Ruling stating that the book value is equal to the fair market value, the fair market value of the subject shares was clearly indicated in the CGT Return executed by petitioner itself. Thus even if we disregard the BLC's Financial Statements as of December 31, 2008, indicating the amount of P332.78 as the fair market value of the subject shares of stock pursuant to Section 7(c.2.2.) of RR No. 6-2008, the Court cannot simply refrain from noticing petitioner's own admission in its CGT Return on the fair market value of such shares. Otherwise stated, there would still be an imposition of donor's tax even without the application of Section 7(c.2.2.) of RR No. 6-2008.

On the prayer to declare Revenue Memorandum Circular (RMC) No. 25-2011 dated March 2, 2011 void, let it be again stated that petitioner failed to show proof that it availed of the remedy of review of said BIR Ruling by the Secretary of Finance as required under Section 3[6] of RMC No. 44-2001. To be sure, petitioner, at this stage of the proceeding, can no longer cry foul on the ground that it was not given the opportunity to be heard prior to the issuance of RMC No. 25-2011. Clearly, petitioner slept on his right.

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[5] The Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue, G.R. No. 210987, November 24, 2014

[6] Section 3. *Rulings Adverse to the Taxpayer.* — A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must: xxx

Significantly, both Section 7(c.2.2.) of RR No. 6-2008 and RMC No. 25-2011 have been upheld by the Supreme Court in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue,*[7] where the High Court declared, thus:

> "Moreover, Sec. 7(c.2.2) of RR 06-08 does not alter Sec. 100 of the NIRC but merely sets the parameters for determining the "fair market value" of a sale of stocks. Such issuance was made pursuant to the Commissioner's power to interpret tax laws and to promulgate rules and regulations for their implementation.
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> Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted."

The foregoing disposition unequivocally debunked the petitioner's argument that Section 7(c.2.2.) of RR No. 6-2008 is in contravention of Section 100 of the NIRC.

The same case likewise held that "The absence of donative intent, if that be the case, does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law."[8] Lack or absence of donative intent on the part of the parties to the transaction is therefore of no moment.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is

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[7] G.R. No. 210987, November 24, 2014

[8] The Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue, G.R. No. 210987, November 24, 2014

only one Supreme Court from whose decisions all other courts should take their bearings.[9]

With the foregoing, discussion on the other issues raised by petitioner is unwarranted.

**WHEREFORE,** the Petition for Review dated October 21, 2014 filed by Metro Pacific Corporation [now Neo Oracle Holdings, Inc.] is hereby **DENIED**, for lack of merit.

The Decision dated June 11, 2014, and the Resolution dated September 16, 2014, rendered by the Court in Division are **AFFIRMED**.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[9] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Amelia R. Cotangco-Manalastas
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice