REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TRANS-ASIA OIL AND ENERGY DEVELOPMENT CORPORATION,
Respondent.

CTA EB NO. 2009
(CTA Case No. 9078)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

JAN 0 8 2021
1:10 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration Re: Decision dated 21 July 2020, filed through registered mail on September 1, 2020, with respondent's Comment/Opposition (Re: Motion for Reconsideration dated August 26, 2020) with Motion to Release Surety Bond, filed on October 1, 2020.

In his motion, petitioner insists that the transaction involved in this case which is the distribution of property dividends is subject to donor's tax. On the other hand, respondent asserts that the distribution of property dividend does not fall within the ambit of the term "other disposition of shares of stock" subject to *donor's tax* under Revenue Regulations No. (RR) 6-2008, as amended by RR 6-2013.

Meanwhile, respondent further moves for the release of its surety bond.

After careful consideration of the arguments involved in this case, the Court *En Banc* resolves to deny petitioner's motion.

Petitioner reiterates that respondent's distribution of property dividend is considered "other disposition of shares of stock held as capital assets." Therefore, the difference between the total fair market value and the book value of the property dividend should be deemed a gift.

The Court *En Banc* disagrees. The assailed Decision clearly resolved the said issue in this wise[1]:

> "Moreover, the Court *En Banc* upholds the actual finding that the distribution of property dividends by the respondent is a non-reciprocal transfer since there was no consideration exchanged for the dividends:
>
> '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 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 stockholders to whom the dividends were distributed for this particular transaction?

[1] Decision, *Rollo*, pp. 183-185.

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:

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.'

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).'

Records show that petitioner wholly owned TAPC in 2013. 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:

'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. x x x. 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%.

> Since the respondent as distributing company does not receive any consideration from its shareholders, Section 100 of the 1997 NIRC clearly does not apply.
>
> The property dividend distribution by the respondent is *not* a donation and is *not* made out of its liberality. Dividends are returns or income from the invested capital of its stockholders. They are part 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, in accordance with their respective interests. Dividends are that 'portion of profits and surplus funds of corporation which has actually been set apart by valid resolution of the board of directors, or by stockholders at corporate meeting, for distribution among stockholders according to their respective interests in such as sense as to become segregated from the property of the corporation, and to become property of shareholders distributively.'
>
> Accordingly, the distribution of property dividends is a realization of income on the part of the respondent's stockholders, by virtue of their capital investment in the corporation. Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation."

Again, dividends, *i.e.*, property dividends, are returns on capital of the subject investors. These are not made out of liberality by the issuing corporation. Hence, donor's tax is not imposable thereon. As such, the Court finds no merit to petitioner's arguments.

As to respondent's motion to release surety bond, the Guidelines on Corporate Surety Bonds[2] provides that the lifetime of any bond issued in any court proceeding shall be from court approval until the case is finally decided, resolved or terminated. Considering that the case has not yet attained finality, the denial thereof is likewise in order.

WHEREFORE, petitioner's Motion for Reconsideration Re: Decision dated 21 July 2020 and respondent's Motion to Release Surety Bond are both **DENIED**, for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[2] A.M. No. 04-7-02-SC (2004).