REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROVINCE OF PANGASINAN & MARILOU E. UTANES IN HER CAPACITY AS THE PROVINCIAL TREASURER OF PANGASINAN, Petitioners,	**CTA EB NO. 1883 (CTA AC No. 173)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
TEAM SUAL CORPORATION, Respondent.	**Promulgated:** AUG 30 2019 2:45 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by petitioners under Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seeks the reversal of the following:

1. November 3, 2017 Decision[1] of the CTA First Division[2] the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED.**

[1] Annex A, Petition for Review, *Rollo*, pp. 35-51.
[2] Penned by J. Erlinda P. Uy with the concurrence of P.J. Roman G. Del Rosario and J. Cielito N. Mindaro-Grulla.

Accordingly, the Decision dated February 10, 2016 and Order dated May 31, 2016, both rendered by the RTC Branch 37 of Lingayen, Pangasinan, in Civil Case No. 19095, are **REVERSED AND SET ASIDE**.

The Assessment dated November 3, 2010, demanding payment of transfer tax on the alleged transfer of machineries and buildings of the Sual Power Plant in the amount of ₱178,457,040.00 plus interest and surcharges, is **SET ASIDE AND NULLIFIED** for lack of factual and legal basis.

SO ORDERED."

2. May 2, 2018 Resolution[3] denying herein petitioners' Motion for Reconsideration of for lack of merit.

THE FACTS

The facts, summarized from the November 3, 2017 Decision and condensed from the records, are as follows:

The Parties

Petitioner Province of Pangasinan is a local government unit, which imposed local transfer tax on the alleged transfer of machineries and buildings of the Sual Power Plant. The Provincial Treasurer was impleaded in the case in her official capacity as OIC-Provincial Treasurer of Pangasinan.

Respondent TeaM Sual Corporation (TeaM Sual) is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal place of business in Sual, Pangasinan.

The Facts

On June 22, 2007, Mirant Asia-Pacific Ventures, Inc. as succeeded by Mirant Asia-Pacific Ventures, LLC and Mirant Asia-Pacific Holdings, Inc., United States corporations (*collectively* Mirant), sold their shares of stock in Mirant Asia Pacific Limited (MAPL), a Bermuda corporation, to Tokyo Crimson Energy Holdings Corporation as succeeded by CrimsonPower Holdings Company, Inc. (CrimsonPower), a domestic joint venture company between Tokyo Electric Power Company International B.V. (Tokyo Electric) and Marubeni Corporation (Marubeni), summarized below:[4] ye

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[3] Annex B, Petition for Review, *Rollo*, pp. 52-55.

[4] TeaM Sual Memorandum, Division Docket, p. 473; January 3, 2011 Protest Letter of TeaM Sual, Division Docket, p. 131; Q&A21- Q&A23, Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records; Exhibits J, K and L, attached to the Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records.

Transferor	Transferee	Number of Shares
Mirant Asia-Pacific Holdings, Inc.	CrimsonPower Holdings Company, Inc.	10,612,442
Mirant Asia-Pacific Ventures, LLC	CrimsonPower Holdings Company, Inc.	95,511,977

Through the sale of MAPL shares of stock, CrimsonPower became a shareholder of MAPL, which is the ultimate parent holding company of Mirant's businesses in the Philippines.[5] Mirant's businesses in the Philippines included TeaM Sual, formerly named Mirant Sual Corporation (Mirant Sual).[6]

In a letter dated June 25, 2011, the Energy Regulatory Commission was notified of the sale of the MAPL shares.[7]

On July 23, 2007, respondent amended its corporate name from Mirant Sual Corporation to TeaM Sual Corporation, which was approved by the Securities and Exchange Commission.[8]

The Province of Pangasinan through the Provincial Assessor's Office received information from the Municipal Assessor's Office of Sual, Pangasinan about a letter dated August 16, 2007 from former Mirant Sual Station Manager, Mr. Ricardo Llanda, informing the Municipal Assessor about the completion of the sale of Mirant's businesses in the Philippines, to include the Sual Coal-Fired Power Plant.[9]

Consequently, the Provincial Assessor through the Municipal Assessor of Sual, Pangasinan was requested to effect the change in the ownership record from Mirant Sual Corporation to TeaM Sual. As a requirement for the procedure, the Office of the Provincial Assessor of Pangasinan sent the letter dated September 3, 2007 to TeaM Sual, requesting from the latter a copy of the "Deed of Conveyance" for the "transfer of ownership made between Mirant Corporation and the consortium of Tokyo Electric Power Company International B.V. and Marubeni Corporation which was subsequently renamed as TeaM Sual Corporation."[10]

In response, TeaM Sual sent the letter dated September 17, 2007 to the Provincial Assessor, where it clarified that the sale of the Philippine businesses of Mirant, which includes Mirant's indirect interests in TeaM Sual, was undertaken through a sale of shares of Mirant in MAPL.[11] 9r

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[5] TeaM Sual Memorandum, Division Docket, p. 473; January 3, 2011 Protest Letter of TeaM Sual, Division Docket, p. 131; Q&A21, Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records; Exhibits J, K and L, attached to the Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records.
[6] TeaM Sual Memorandum, Division Docket, p. 473.
[7] Q&A22 and Exhibit L, attached to the Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records.
[8] Q&A15- Q&A16 and Exhibit D, attached to the Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records.
[9] Respondents' Memorandum, Division Docket, p. 493-494; Petition for Review, *Rollo*, p. 19; Annex A, Certified True Copy of the February 10, 2016 RTC Branch 37 Decision, Division Docket, p. 31.
[10] November 3, 2017 Decision, *Rollo*, p. 36.
[11] *Id.*

On November 9, 2010, TeaM Sual received the Assessment dated November 3, 2010, demanding payment of transfer tax of real property ownership on the alleged transfer of machineries and buildings of the Sual Power Plant in the amount of ₱178,457,040, plus interest and surcharges.[12] The amount assessed was based on the total market value of all machineries and buildings of TeaM Sual according to the data from the Provincial Assessor's Office amounting to ₱35,691,407,870.00 multiplied by 50% of 1% pursuant to Section 135 of the Local Government Code (LGC) and Section 17 of the 2006 Revenue Code of the Province of Pangasinan (Pangasinan Revenue Code).[13]

Subsequently, on January 5, 2011, TeaM Sual filed its Protest Letter dated January 3, 2011 but the Provincial Treasurer failed to act thereon.[14]

Regional Trial Court (RTC) Branch 37 Proceedings

On April 6, 2011, in order to preserve its right to question the assessment, TeaM Sual filed a Complaint before the RTC Branch 37 of Lingayen, Pangasinan, docketed as Civil Case No. 19095, praying for the annulment and setting aside of said Assessment in the amount of ₱178,457,040, plus the interest and surcharges thereon.[15]

On the other hand, petitioners prayed for the dismissal of said Complaint in their Answer with Third-Party Complaint.[16]

On February 10, 2016, after trial, the RTC Branch 37 of Lingayen, Pangasinan, rendered the assailed Decision, which dismissed the Complaint, and declared TeaM Sual liable to pay transfer tax to the Province of Pangasinan.[17] In said Decision, the RTC held that Mirant Sual is not the same as TeaM Sual since the former had long been completely acquired by multinational corporations and the latter is 99.99% owned by TeaM Energy Corporation and 0.01% owned by persons who were not even the incorporators or directors of Mirant Sual. It concluded that "[w]hile there is point to the argument that a change in stockholders does not necessarily affect the corporation itself, not so if the entire incorporators and directors have all been swept away by a succeeding corporation."[18] gc

[12] *Id.* at pp. 36-37.
[13] Q &A11, Judicial Affidavit of Atty. Rosalie F. Factor attached to the Plaintiff's Pre-Trial Brief, RTC Records; Q&A8 Judicial Affidavit of Nestor P. Quiambao, Provincial Assessor, RTC Records, Vol. 1, p. 174.
[14] *Id.* at p. 37.
[15] *Id.*
[16] *Id.*
[17] *Id.*; Annex A, Certified True Copy of the February 10, 2016 RTC Branch 37 Decision, Division Docket, pp. 29-37.
[18] Annex A, Certified True Copy of the February 10, 2016 RTC Branch 37 Decision, Division Docket, p. 36.

On March 16, 2016, TeaM Sual filed its Motion for Reconsideration (of the Decision dated February 10, 2016), praying for a reconsideration of the said Decision and for the annulment of the assessment and imposition of the local transfer tax by respondents in the amount of ₱178,457,040.00. TeaM Sual claims that the said Decision is void because it did not state the law on which it is based and is contrary to law and to the evidence on record.[19]

On April 7, 2016, petitioners filed their Opposition (To Plaintiff's Motion for Reconsideration), stating that the assailed Decision is proper and valid, and, thus, prayed for the denial of TeaM Sual's Motion for Reconsideration.[20]

In the assailed Order dated May 31, 2016, TeaM Sual's Motion for Reconsideration was denied by the RTC.[21]

CTA First Division Proceedings

On July 14, 2016, TeaM Sual filed a Petition for Review with the Court *a quo*, praying for the reversal and setting aside of the RTC's Decision and Order, and the annulment of the assessment.[22]

In the Resolution dated August 1, 2016, public respondents were ordered to file their Comment, not a motion to dismiss, within ten (10) days from notice thereof, which they filed on August 23, 2016.[23]

The Court issued the Resolution dated September 19, 2016, giving due course to the petition and directing the submission of the respective memoranda of the parties, within thirty (30) days from notice.[24]

Meanwhile, in an October 19, 2016 Resolution, the Court ordered the Branch Clerk of Court of RTC Branch 37 of Lingayen, Pangasinan, to elevate the entire original records of Civil Case No. 19095, within ten (10) days from notice thereof, pursuant to Rule 6, Section 5(b) of the RRCTA.[25]

On November 14, 2016, the CTA First Division received the entire original records of the said case, composed of two (2) volumes, consisting of five hundred forty-two (542) pages, together with the Transcript of Stenographic Notes taken thereon, Judicial Affidavit of Atty. Rosalie Factor, and the Pre-Trial Brief for the plaintiff TeaM Sual.[26] *gr*

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[19] *Id.*
[20] *Id.*
[21] *Id.* at p. 38.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

On December 19, 2016, after the filing of TeaM Sual's Memorandum on October 24, 2016, and public respondents' Memorandum on October 28, 2016, the case was submitted for decision.[27]

On November 3, 2017, the Court *a quo* rendered the assailed Decision which reversed and set aside the RTC Decision and Resolution and nullified the November 3, 2010 assessment for lack of factual and legal basis.[28]

On May 2, 2018, upon the motion for reconsideration filed by herein public petitioners, the CTA First Division denied the same for lack of merit.[29]

CTA En Banc Proceedings

On May 30, 2018, petitioners filed via registered mail a Motion for Extension of Time to File Petition for Review with Motion to Assign Docket Number.[30]

On June 21, 2018, petitioners filed the Petition for Review by registered mail.[31]

In an August 7, 2018 Resolution, the Court *En Banc* directed respondent TeaM Sual to file its comment within ten (10) days from notice.[32]

On September 3, 2018, after an extension was granted by the Court,[33] TeaM Sual filed its comment.[34]

On September 20, 2018, after considering the arguments raised by the parties, the Court resolved to give due course to the petition and submitted the case for decision.[35]

THE ISSUE

Petitioners state that the CTA First Division committed reversible error when it held that:

1. The change of respondent's name from Mirant Sual Corporation to TeaM Sual Corporation did not create a new corporation or change its corporate being; and,

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[27] *Id.*
[28] *Rollo*, p. 50.
[29] *Rollo*, p. 55.
[30] *Rollo*, pp. 10-12.
[31] *Rollo*, pp. 18-31.
[32] *Rollo*, pp. 238-239.
[33] August 28, 2019 Minute Resolution, *Rollo*, p. 245.
[34] *Rollo*, pp. 246-257.
[35] *Rollo*, pp. 261-262.

2. No transfer tax was due on the transaction, despite the failure or refusal of the respondent to submit the required documents evidencing the alleged sale of MAPL shares.[36]

THIS COURT'S RULING

The issues raised are intertwined and legal in nature. Essentially, what is being asked of the Court to decide is whether the change in ownership of one corporation and, consequently, a change in its name, also results in the transfer of ownership its assets, *i.e.* machineries and buildings of Sual Coal-Fired Power Plant, subject to tax on transfer of real property ownership under Section 135 of the LGC.

We resolve to deny the petition and uphold the assailed decision and resolution of the CTA First Division.

Mirant Sual and TeaM Sual are one and the same corporation. Accordingly, there was no transfer of ownership over the machineries and buildings of its coal-fired power plant subject to transfer tax on real property ownership under Section 135 of the LGC.

In *Phil. First Insurance Co., Inc. v. Hartigan, et al.*,[37] citing the American case, *Pacific Bank v. De Ro, the* Supreme Court *En Banc* held that an insurance corporation named "The Yek Tong Lin Fire and Marine Insurance Co., Ltd.," which amended its articles of incorporation changing its name to "Philippine First Insurance Co., Inc." did *not* result in the creation of a new corporate entity. In said civil case for sum of money filed by Philippine First Insurance Co., Inc., the defendants argued that they signed said indemnity agreement in favor of "The Yek Tong Lin Fire and Marine Insurance Co., Ltd." and not in favor of the plaintiff, "Philippine First Insurance Co., Inc." The Supreme Court explained that the facts involved only a change of corporate name. The new corporate name indicated that the corporation remained an insurance company, thus:

> "xxxx. The whole case, however, revolves around only one question. <u>May a Philippine corporation change its name and still retain its original personality and individuality as such</u>?
>
> xxx xxx xxx *yr*

[36] Petition for Review, *Rollo*, p. 24.
[37] G.R. No. L-26370, July 31, 1970.

Local well known corporation law commentators are unanimous in the view that a corporation may change its name by merely amending its charter in the manner prescribed by law. American authorities which have persuasive force here in this regard because our corporation law is of American origin, the same being a sort of codification of American corporate law, are of the same opinion.

> 'A general power to alter or amend the charter of a corporation necessarily includes the power to alter the name of the corporation.' Ft. Pitt Bldg., etc., Assoc. v. Model Plan Bldg., etc., Assoc., 159 Pa. St. 308, 28 Atl. 215; In re Fidelity Mut. Aid Assoc., 12 W.N.C. (Pa.) 271; Excelsior Oil Co., 3 Pa. Co. Ct. 184; Wetherill Steel Casting Co., 5 Pa. Co. Ct. 337.

Neither can We share the posture of His Honor that the change of name of a corporation results in its dissolution. There is unanimity of authorities to the contrary.

> '<u>An authorized change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation or lessen or add to its obligations. After a corporation has effected a change in its name it should sue and be sued in its new name</u> . . .' (13 Am. Jur. 276-277, citing cases.)
>
> '<u>A mere change in the name of a corporation, either by the legislature or by the corporators or stockholders under legislative authority, does not, generally speaking, affect the identity of the corporation, nor in any way affect the rights, privileges, or obligations previously acquired or incurred by it. Indeed, it has been said that a change of name by a corporation has no more effect upon the identity of the corporation than a change of name by a natural person has upon the identity of such person. The corporation, Upon such change in its name, is in no sense a new corporation, nor the successor of the original one, but remains and continues to be the original corporation. It is the same corporation with a different name, and its character is in no respect changed . . .</u>' (6 Fletcher, Cyclopedia of the Law of Private Corporations, 224-225, citing cases.)
>
> 'The change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation, or lessen or add to its obligations.'
>
> xxx xxx xxx
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> 'The fact that the corporation by its old name makes a formal transfer of its property to the corporation by its new name does not of itself show that the change in name has affected a change in the identity of the corporation. Palfrey v. Association for Relief, etc., 110 La. 452, 34 So. 600. The fact that a corporation organized as a state bank afterwards becomes a national bank by complying with the provisions

> of the National Banking Act, and changes its name accordingly, has no effect on its right to sue upon obligations or liabilities incurred to it by its former name.' Michigan Ins. Bank v. Eldred, 143 U.S. 293, 12 S. Ct. 450, 36 U.S. (L. ed.) 162.
>
> 'A deed of land to a church by a particular name has been held not to be affected by the fact that the church afterwards took a different name.' Cahill v. Bigger, 8 B. Mon. (ky) 211.
>
> '<u>A change in the name of a corporation is not a divestiture of title or such a change as requires a regular transfer of title to property, whether real or personal, from the corporation under one name to the same corporation under another name</u>. McCloskey v. Doherty, 97 Ky. 300, 30 S. W. 649." (19 American and English Annotated Cases 1242-1243.)

> As was very aptly said in *Pacific Bank v. De Ro*, 37 Cal. 538, '<u>The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person is the begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports — a change of *name*, and not a change of *being*</u>.'" (*Underscoring supplied*)

A careful review of the evidence on record confirms the principle discussed by the Supreme Court above. Respondent's change of name from Mirant Sual Corporation to TeaM Sual Corporation, which was approved by the SEC, did not result in the creation of a new corporation as its registration number remained the same: SEC Company Registration No. ASO94-002935.[38]

In the Court's view, petitioners were unable to present any new argument or point to a piece of evidence that would convincingly overturn the same finding by the Court *a quo*:

> "Thus, <u>central to the resolution of whether there was a transfer of ownership or title of real property in this case, is the determination whether indeed petitioner merely changed its corporate name, or is a separate corporate entity from that of Mirant Sual Corporation</u>.
>
> We find that petitioner merely changed its corporate name from '*Mirant Sual Corporation*' to '*Team Sual Corporation*,' and this finding is supported by the evidence presented, formally offered, and admitted, in the case *a quo*. The RTC Branch 37 of Lingayen, Pangasinan, in rendering the assailed Decision should have relied on the said evidence.
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> Specifically, to establish that petitioner and Mirant Sual Corporation are one and the same corporation, petitioner presented its Articles of Incorporation (AOI), and amendments thereto relating to its change of

[38] Q&A15-Q&A18, Exhibits D, E, F and G, attached to the Judicial Affidavit of Atty. Rosalie F. Factor, Plaintiff's Pre-Trial Brief, RTC Records.

name, with their corresponding Certificates issued by the Securities and Exchange Commission (SEC). The significant information found in the said documents are as follows:

Exhibit	Name of petitioner as indicated in the AOI and its subsequent amendments	SEC Registration No.	Date of Registration/ Approval of Change of Name by SEC
'G'	Pangasinan Electric Corporation	AS094-002935	March 29, 1994
'F'	Southern Energy Pangasinan, Inc.	AS094-002935	August 17, 1999
'E'	Mirant Sual Corporation	AS094-002935	June 28, 2001
'D'	Team Sual Corporation	AS094-002935	July 23, 2007

Without doubt, the SEC is the repository of the said documents, pursuant to Sections 14, 16, and 18 of the Corporation Code of the Philippines, 31 to wit:

> 'SEC. 14. *Contents of Articles of Incorporation.* — **All corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation** in any of the official languages, duly signed and acknowledged by all of the incorporators, x x x.' (Emphasis supplied)
>
> 'SEC. 16. *Amendment of Articles of Incorporation.* — x x x.
>
> The original and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation. **Such articles, as amended,** shall be indicated by underscoring the change or changes made, and a copy thereof duly certified under oath by the corporate secretary and a majority of the directors or trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the stockholders or members, **shall be submitted to the Securities and Exchange Commission.**
>
> **The amendments shall take effect upon their approval by the Securities and Exchange Commission** or from the date of filing with the said Commission if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation.' (*Emphases supplied*)
>
> 'SEC. 18. *Corporate name.* — No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. **When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name.**' (*Emphasis supplied*)

Thus, the said Exhibits 'G', 'F', 'E', and 'D' are considered public documents, and as such, are prima facie evidence of the facts therein stated, pursuant to Rule 132, Section 23, of Rules of Court provides as follows:

> 'SEC. 23. *Public documents as evidence.* — **Documents consisting of entries in public records made in the performance of duty by a public officer are *prima facie* evidence of the facts therein stated.** All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.' (Emphasis supplied)

Based on the foregoing provision, since Exhibits 'G', 'F', 'E', and 'D' is clearly indicative that petitioner merely and recently changed its name from '*Mirant Sual Corporation*' to '*Team Sual Corporation*', said corporate entities refer to one and the same corporation. Thus, it was error for the Court *a quo* to rule that the said corporate entities are separate and distinct."

The sale of MAPL shares is not contemplated by Section 135 of the LGC, which is a tax on the transfer of real property ownership.

Section 135 of the LGC provides that a province may impose a tax on the sale, donation, barter, or any mode of transfer of ownership of real property found within its taxing jurisdiction:

> **"CHAPTER II.**
> **SPECIFIC PROVISIONS ON THE TAXING AND OTHER REVENUE-RAISING POWERS OF LOCAL GOVERNMENT UNITS**
>
> **Article I**
> **PROVINCES**
>
> SECTION 134. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the province may levy only the taxes, fees, and charges as provided in this Article.
>
> SECTION 135. *Tax on Transfer of Real Property Ownership.* - (a) <u>The province may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of one percent (1%)</u> of the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. No. 6657 shall be exempt from this tax.
>
> (b) For this purpose, the Register of Deeds of the province concerned shall, before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before cancelling an old tax declaration and issuing a new one

> in place thereof. Notaries public shall furnish the provincial treasurer with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization.
>
> It shall be the duty of the seller, donor, transferor, executor or administrator to pay the tax herein imposed within sixty (60) days from the date of the execution of the deed or from the date of the decedent's death." (*Underscoring supplied*)

A careful review of petitioners' arguments from the trial and on appeal reveals that what the local government intended to tax is the *effect* of the change in ownership of the respondent TeaM Sual and not the actual transfer of its real property assets. Petitioners do not deny that there was no conveyance of *real* properties. What they insist is that, as an *effect* of the conveyance of the MAPL shares, a taxable event occurred under Section 135.

First, under the context of local government taxation, petitioners should note that "a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation."[39]

The transfer of MAPL shares is not a transfer of real property ownership under Section 135 of the LGC. Clearly, MAPL shares are equities and, by definition, not real properties under the contemplation of Section 135 in relation to Article 415 of the Civil Code.[40] ℊℯ

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[39] *Mactan-Cebu International Airport Authority v. City of Lapu-Lapu, et al.*, G.R. No. 181756, June 15, 2015.
[40] Art. 415. The following are immovable property:

> (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
>
> (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
>
> (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
>
> (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
>
> (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
>
> (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
>
> (7) Fertilizer actually used on a piece of land;
>
> (8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;

Second, as discussed at length in the previous section, with respect to the corporate assets of respondent, *i.e.* machineries and building, no conveyance transpired between one person (Mirant Sual) to another (TeaM Sual), which would have had a real property tax consequence. While there was evidence to prove the conveyance of MAPL *shares*, no evidence was uncovered for the alleged conveyance of the *machineries and buildings* subject to Section 135.

Third, the transfer that actually occurred in this case is not between Mirant Sual and TeaM Sual but between the shareholders of its ultimate parent holding company (MAPL), Mirant and CrimsonPower. The legal title to the machineries and buildings remained in the same owner, under these indirect shareholders.

The transfer of MAPL shares from Mirant to CrimsonPower is a type of corporate acquisition at the *equity* level.

An equity level of acquisition constitutes looking at the entirety of the business enterprise as it is owned and operated by the corporation. The purchaser takes control and ownership of the business by purchasing controlling shareholdings of the corporate owner.[41] The control of the business enterprise (respondent TeaM Sual) is *indirect*, since the corporate owner remains the *direct* owner of the business, and what the purchaser (CrimsonPower) has actually acquired is the ability to elect the members of the Board of Directors of the corporation (respondent TeaM Sual) that runs the business.[42]

"*The logic of the doctrine in equity transfer finds support in the main doctrine of separate juridical personality: that by purchasing the shares in a corporation that owns a business, the stockholder does not by that reason alone become the owner directly of the business assets and does not become personally liable for the debts and liabilities of the business. In addition, the buyer of the controlling shares of stock of the corporation may take advantage of the 'limited liability' feature that is part of such corporate set-up.*"[43]

The general rule, therefore, is that in an equity transfer, the transferee does not become personally liable for the obligations of the corporate enterprise under the *main doctrine of separate juridical personality*.[44]

(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

(10) Contracts for public works, and servitudes and other real rights over immovable property. (334a)

[41] Cesar Lapuz Villanueva, Philippine Corporate Law, 2010 edition, pp. 692-693.
[42] *Id.*
[43] *Id.*
[44] *Id.* at p. 694.

Petitioners insist that the transfer of MAPL shares, not only brought about the change in the *name* of the corporation (from Mirant Sual to TeaM Sual) but also a "change in its corporate being."[45] Hence the allegedly new corporation (TeaM Sual), under a new set of shareholders and directors, is liable for the local transfer tax in Section 135. It quotes with agreement RTC's finding that "while a corporation has a right to change its name, the frequent change however is disquieting and raises a red flag if this is no longer the same entity."[46] This position is clearly contrary to prevailing jurisprudence, as first established by the Supreme Court *En Banc* in *Phil. First Insurance Co., Inc.*[47]

More importantly, what the Province of Pangasinan seeks to accomplish is to pierce the veil of corporate fiction by disregarding the separate and distinct identity of the *direct* owner of the real properties (TeaM Sual) and going after the new set of stockholders of its ultimate parent. In effect, the local government is asserting that, because there was a transfer of *indirect* corporate control, there was also a resulting transfer of ownership of the real properties.

When one acquires stock in a corporation, he acquires a fractional interest in the capital stock, assets, profits, and liabilities of the corporation. However, by the very nature of a corporation, the corporate property is vested in the corporation itself and not in the stockholders. Concentration of stock ownership does not alter the fact that title to the corporate property is vested in the corporation and not in the owner of the corporate stock, and even the fact that one owns all the stock of the corporation does not make one the owner of its property.[48]

In *North Davao Mining Corporation v. NLRC*,[49] the Supreme Court *En Banc* had an occasion to rule on this legal point. It held that even when the national government owned a controlling interest in a corporation, it remains only a stockholder thereof, and under existing laws and prevailing jurisprudence, a stockholder as a rule is not directly, individually and/or personally liable for the indebtedness of the corporation. It further elaborated that the obligation of corporation cannot be considered the obligation of the national government, its controlling stockholder. Hence, whether the latter is solvent was not material. The separate personalities of the corporation and its stockholders were, thus, preserved:

> "At this juncture, we note that the Solicitor General in his Comment challenges the petitioners' assertion that North Davao, having closed down,

[45] Petition for Review, *Rollo*, p. 25.
[46] *Id.* at p. 26.
[47] G.R. No. L-26370, July 31, 1970.
[48] 18 Am.Jur. 2d *Corporations* §486 (1965).
[49] G.R. No. 112546, March 13, 1996.

> no longer has the means to pay for the benefits. The Solicitor General stresses that North Davao was among the assets transferred by PNB to the national government, and that by virtue of Proclamation No. 50 dated December 8, 1986, the APT was constituted trustee of this government asset. He then concludes that "(i)t would, therefore, be incongruous to declare that the National Government, which should always be presumed to be solvent, could not pay now private respondents' money claims." Such argumentation is completely misplaced. <u>Even if the national government owned or controlled 81.8% of the common stock and 100% of the preferred stock of North Davao, it remains only a stockholder thereof, and under existing laws and prevailing jurisprudence, a stockholder as a rule is not directly, individually and/or personally liable for the indebtedness of the corporation. The obligation of North Davao cannot be considered the obligation of the national government, hence, whether the latter be solvent or not is not material to the instant case. The respondents have not shown that this case constitutes one of the instances where the corporate veil may be pierced. From another angle, the national government is not the employer of private respondent and his co-complainants, so there is no reason to expect any kind of bailout by the national government under existing law and jurisprudence</u>." (*Underscoring supplied*)

Petitioners, unfortunately, have failed to muster the factual and legal bases to convince the Court to overturn the holding of the Court *a quo*.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The November 3, 2017 Decision and the May 2, 2018 Resolution are hereby **AFFIRMED**.

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice