2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133299 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated October 31, 2013 and the Resolution dated November 27, 2013 of the National Labor Relations Commission in NLRC LAC No. 09-00513-13 are **REINSTATED**.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 216130. August 3, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **GOODYEAR PHILIPPINES, INC.**, *respondent.*

SYLLABUS

1. TAXATION; TAX CODE; SECTION 229 ON CLAIM FOR REFUND; RULE THAT JUDICIAL CLAIM MUST BE FILED WITHIN TWO (2) YEARS FROM DATE OF PAYMENT OF TAX PROVIDED AN ADMINISTRATIVE CLAIM HAS BEEN DULY FILED; TAXPAYER NEED NOT WAIT FOR RESOLUTION OF ADMINISTRATIVE CLAIM BEFORE FILING JUDICIAL CLAIM.— Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR) x x x Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected

erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code — [then Section 306 of the old Tax Code] — however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.

2. ID.; RP-US TAX TREATY; GOVERNS THE TAX IMPLICATIONS OF TRANSACTIONS WITH GOODYEAR TIRE AND RUBBER COMPANY (GTRC), A US RESIDENT CORPORATION; REDEMPTION PRICE RECEIVED BY GTRC COULD NOT BE TREATED AS ACCUMULATED DIVIDENDS IN ARREARS THAT COULD BE SUBJECTED TO 15% FINAL WITHOLDING TAX (FWT) UNDER THE TAX CODE .— [P]etitioner asserts that the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should be subject to 15% FWT on dividends. x x x [That] the component of the redemption price representing the amount of ₱97,732,314.00 should not be treated as a mere premium and part of the subscription price, but as accumulated dividend in arrears, and, hence, subject to 15% FWT. [T]he assertions are wrong. The imposition of 15% final withholding tax (FWT) on intercorporate dividends received by a non-resident foreign corporation is found in Section 28 (B) (5) (b) of the Tax Code x x x [But] Goodyear Tire and Rubber Company (GTRC) is a non-resident foreign corporation, specifically a resident of the US. [P]ursuant to the cardinal principle that treaties have the force and effect of law in this jurisdiction, the RP-US Tax Treaty complementarily governs the tax implications of respondent's transactions with GTRC. Under Article 11 (5) of the RP-US Tax Treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which, in this case, pertains to respondent, a resident of the Philippines. Accordingly, attention should be drawn to the statutory definition of what constitutes "dividends," pursuant to Section 73 (A) of the Tax Code which provides that "**[t]he term 'dividends'** x x x **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." In light of the foregoing, the Court therefore holds that the redemption price representing the amount of

> ₱97,732,314.00 received by GTRC could not be treated as accumulated dividends in arrears that could be subjected to 15% FWT. Verily, respondent's Audited Financial Statements (AFS) covering the years 2003 to 2009 show that it did not have unrestricted retained earnings, and in fact, operated from a position of deficit. **Thus, absent the availability of unrestricted retained earnings, the board of directors of respondent had no power to issue dividends.** Consistent with Section 73 (A) of the Tax Code, this rule on dividend declaration — *i.e.*, that it is dependent upon the availability of unrestricted retained earnings — was further edified in Section 43 of The Corporation Code of the Philippines x x x It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock which, however, does not obtain in this case. As aptly pointed out by the CTA *En Banc*, the amount of ₱97,732,314.00 received by GTRC did not represent a periodic distribution of dividend, but rather a payment by respondent for the redemption of GTRC's 3,729,216 preferred shares.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 14, 2014 and the Resolution[3] dated

---

[1] *Rollo*, pp. 9-23.

[2] *Id*. at 25-52. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring.

[3] *Id*. at 53-56. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito

January 5, 2015 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 1041, which affirmed the Decision[4] dated March 25, 2013 and the Resolution[5] dated June 26, 2013 of the CTA Second Division (CTA Division) in C.T.A. Case No. 8188, ordering petitioner Commissioner of Internal Revenue (petitioner) to refund or issue a tax credit certificate (TCC) in the sum of ₱14,659,847.10 to respondent Goodyear Philippines, Inc. (respondent), representing erroneously withheld and remitted final withholding tax (FWT).

The Facts

Respondent is a domestic corporation duly organized and existing under the laws of the Philippines, and registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Taxpayer Identification Number 000-409-561-000.[6] On August 19, 2003, the authorized capital stock of respondent was increased from ₱400,000,000.00 divided into ₱4,000,000 shares with a par value of ₱100.00 each, to ₱1,731,863,000.00 divided into 4,000,000 common shares and 13,318,630 preferred shares with a par value of ₱100.00 each. Consequently, all the preferred shares were solely and exclusively subscribed by Goodyear Tire and Rubber Company (GTRC), which was a foreign company organized and existing under the laws of the State of Ohio, United States of America (US) and is unregistered in the Philippines.[7]

On May 30, 2008, the Board of Directors of respondent authorized the redemption of GTRC's 3,729,216 preferred shares

---

C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring.

[4] *Id*. at 63-104. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.

[5] Resolved by the CTA Special Second Division. *Id*. at 105-107.

[6] *Id*. at 63-64.

[7] *Id*. at 64.

on October 15, 2008 at the redemption price of ₱470,653,914.00, broken down as follows: ₱372,921,600.00 representing the aggregate par value and ₱97,732,314.00, representing accrued and unpaid dividends.[8]

On October 15, 2008, respondent filed an application for relief from double taxation before the International Tax Affairs Division of the BIR to confirm that the redemption was not subject to Philippine income tax, pursuant to the Republic of the Philippines (RP) – US Tax Treaty.[9] This notwithstanding, respondent still took the conservative approach, and thus, withheld and remitted the sum of ₱14,659,847.10 to the BIR **on November 3, 2008**, representing fifteen percent (15%) FWT, computed based on the difference of the redemption price and aggregate par value of the shares.[10]

On October 21, 2010, respondent filed an administrative claim for refund or issuance of TCC, representing 15% FWT in the sum of ₱14,659,847.10 before the BIR. Thereafter, or **on November 3, 2010**, it filed a judicial claim, by way of petition for review, before the CTA, docketed as C.T.A. Case No. 8188.[11]

For her part, petitioner maintained that respondent's claim must be denied, considering that: (*a*) it failed to exhaust administrative remedies by prematurely filing its petition before the CTA; and (*b*) it failed to submit complete supporting documents before the BIR.[12]

---

[8] *Id*. at 64-65.

[9] Entitled "CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO TAXES ON INCOME," which entered into force on October 16, 1982.

[10] *Rollo*, p. 65.

[11] *Id*. at 84-85.

[12] *Id*. at 28 and 66-70.

The CTA Division Ruling

In a Decision[13] dated March 25, 2013, the CTA Division granted the petition and thereby ordered petitioner to refund or issue a TCC in the sum of ₱14,659,847.10 to respondent for being erroneously withheld and remitted as FWT.[14] Concerning the procedural issue, the CTA Division ruled that it was appropriate for respondent to dispense with the administrative remedy before the BIR, considering that court action should be instituted within two (2) years after the payment of the tax regardless of the pendency of the administrative claim; otherwise, the taxpayer would be barred from recovering the same.[15]

On the merits, the CTA Division found that the redemption of the 3,729,216 shares issued to GTRC – which were then converted to treasury shares – was **not** subject to Philippine income tax. The CTA Division elucidated that while the general rule is that the net capital gain obtained by a non-resident foreign corporation, such as GTRC, in the redemption of shares would be subjected to tax rates of five percent (5%) and ten percent (10%) under Section 28 (B) (5) (c)[16] of the National Internal

---

[13] *Id*. at 63-104.

[14] *Id*. at 103-104.

[15] *Id*. at 87-88.

[16] SEC. 28. **Rates of Income Tax on Foreign Corporations. –**

x x x x x x x x x

(B) *Tax on Nonresident Foreign Corporation*. –

x x x x x x x x x

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.*–

x x x x x x x x x

(c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* – A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

Revenue Code, as amended (Tax Code), the provisions, however, of the RP-US Tax Treaty would also apply in determining the tax implications of the redemption of GTRC's preferred shares because it is a resident of the US.[17] It pointed out that under Article 14[18] of the RP-US Tax Treaty, any gain derived by a US resident (*i.e.*, GTRC) from the alienation of its properties (*i.e.*, the preferred shares), other than those described in paragraph 1 thereof, shall only be taxable in the US. Nonetheless, the CTA Division remained mindful of the Reservation Clause[19] in the same treaty which provided that the gains derived by a US resident from the disposition of shares in a domestic corporation may be taxed in the Philippines, provided that the

---

Not over ₱100,000..... 5%
On any amount in excess of ₱100,000..... 10%

(See also *id*. at 93-94.)

[17] *Id*. at 94.

[18] Article 14 of the RP-US Tax Treaty states:

Article 14
CAPITAL GAINS

1. Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13 (Royalties).
2. Gains from the alienation of any property other than those mentioned in paragraph 1 or in Article 7 Income from Real Property) shall be taxable only in the Contracting State of which the alienator is a resident. (See also *id*. at 94.)

[19] *Id*. at 95.

latter's assets **principally**[20] consist of real property. After evaluating the Audited Financial Statements (AFS) of respondent for the years 2007 and 2008, and noting that the value of its real properties – *i.e.*, property, plant, and equipment – comprise less than 50% of its total assets, the CTA Division held that respondent's assets did not principally consist of real property and, hence, exempt from capital gains tax under Section 28 (B) (5) (c) of the Tax Code.[21]

The CTA Division then determined whether the net capital gain derived by GTRC would be subjected to 15% FWT imposed on intercorporate dividends under Section 28 (B) (5) (b)[22] of the Tax Code. Citing the RP-US Tax Treaty, the CTA Division noted that dividend income shall be determined by the law of the state in which the distributing corporation is a resident,[23] which in the Philippines' case, would be Section 73 (A)[24] of the Tax Code, defining dividends for income tax purposes as

---

[20] "Principally" means more than 50% of the entire assets in terms of value. See *id*. at 96.

[21] *Id*. at 91-97.

[22] (b) *Intercorporate Dividends*. – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57 (A) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: Provided, that effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends; (See also *id*. at 97-98)

[23] *Id*. at 98.

[24] 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.

distributions to shareholders arising out of its earnings or profits. Accordingly, the CTA Division held that the net capital gain of GTRC could not be regarded as "dividends," considering that it did not come from respondent's unrestricted earnings or profits, as the records would show that it did not have any unrestricted earnings from the years 2003-2009 to cover any dividend pay-outs.[25] Finally, the CTA Division explained that there is only one instance in the Tax Code which treated the gains derived from redemptions or buy back of shares as dividends, and this is found in Section 73 (B),[26] which contemplated the issuance of stock dividends. The CTA Division, however, dispelled the application of this provision, considering that the shares which respondent redeemed were neither stock dividends nor were they redeemed using unrestricted retained earnings. In sum, the CTA Division ruled that absent any law which specifically treats the gain derived by GTRC as dividends, the same could not be subjected to 15% FWT under Section 28 (B) (5) (b).[27]

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be.

(See also *id*. at 99.)

[25] *Id*. at 97-100.

[26] SEC. 73. *Distribution of Dividends or Assets by Corporations*. –

x x x x x x x x x

(B) *Stock Dividend*. – A stock dividend representing the transfer of surplus to capital account shall not be subject to tax. However, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits.

(See also *id*. at 101.)

[27] *Id*. at 101-102.

Dissatisfied, petitioner moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated June 26, 2013. Thereafter, she appealed[30] to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[31] dated August 14, 2014, the CTA *En Banc* affirmed the findings of the CTA Division. Echoing the ruling of the CTA Division, the CTA *En Banc* found that respondent was compelled to seek judicial recourse after thirteen (13) days from filing its administrative claim so as not to forfeit its right to appeal to the CTA. Anent the tax treatment of the redemption price paid by respondent to GTRC, the CTA *En Banc* fully agreed with the disposition of the CTA Division, ruling that the net capital gain received by GTRC was not subject to Philippine income tax.[32]

Undaunted, petitioner filed a motion for reconsideration,[33] which was, however, denied in a Resolution[34] dated January 5, 2015; hence, this petition.

The Issues Before the Court

The issues raised by petitioner in this case are: (*a*) whether or not the judicial claim of respondent should be dismissed for non-exhaustion of administrative remedies; and (*b*) whether or not the CTA *En Banc* correctly ruled that the gain derived by GTRC was not subject to 15% FWT on dividends.

---

[28] Not attached to the *rollo*.

[29] *Rollo*, pp. 105-107.

[30] Not attached to the *rollo*.

[31] *Rollo*, pp. 25-52.

[32] *Id*. at 35-50.

[33] Not attached to the *rollo*.

[34] *Rollo*, pp. 53-56.

The Court's Ruling

The petition is devoid of merit.

I.

At the onset, petitioner contends that by filing the administrative and judicial claims only 13 days apart, respondent, in effect, pursued an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. In this regard, petitioner maintained that the mere filing of the administrative claim before the BIR did not outrightly satisfy the requirement of exhaustion of administrative remedy.[35]

The contentions are untenable.

Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), *viz*.:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected*. – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously** or illegally assessed or **collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment** x x x. (Emphases and underscoring supplied)

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action

---

[35] *Id*. at 17.

would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR*,[36] the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in **no wise does the law**, *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In *Kiener,* the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x.[37] (Emphases and underscoring supplied)

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period.[38] Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

---

[36] G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 746 SCRA 93.

[37] *Id*. at 110-111; citation omitted.

[38] Date of payment was November 3, 2008, while the administrative and judicial claims were respectively filed on October 21, 2010 and November 3, 2010. *Rollo*, pp. 27-28.

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.

II.

For another, petitioner asserts that the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should be subject to 15% FWT on dividends. She claims that while the payment of the original subscription price could not be taxed as it represented a return of capital, the additional amount, however, or the component of the redemption price representing the amount of ₱97,732,314.00 should not be treated as a mere premium and part of the subscription price, but as accumulated dividend in arrears, and, hence, subject to 15% FWT.[39]

Again, the assertions are wrong.

The imposition of 15% FWT on intercorporate dividends received by a non-resident foreign corporation is found in Section 28 (B) (5) (b) of the Tax Code which reads:

SEC. 28. *Rates of Income Tax on Foreign Corporations*. –

x x x x x x x x x

(B) *Tax on Nonresident Foreign Corporation*. –

x x x x x x x x x

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation*. –

(b) *Intercorporate Dividends*. – **A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57 (A) of this Code**, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow

---

[39] *Id*. at 14-17.

a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided*, That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends;

x x x x x x x x x

(Emphasis and underscoring supplied)

It must be noted, however, that GTRC is a non-resident foreign corporation, specifically a resident of the US. Thus, pursuant to the cardinal principle that treaties have the force and effect of law in this jurisdiction,[40] the RP-US Tax Treaty complementarily governs the tax implications of respondent's transactions with GTRC.

Under Article 11 (5)[41] of the RP-US Tax Treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which, in this case, pertains to respondent, a resident of the Philippines. Accordingly, attention should be drawn to the statutory definition of what constitutes "dividends," pursuant to Section 73 (A)[42] of the Tax Code which provides that "**[t]he**

---

[40] *Deutsche Bank AG Manila Branch v. CIR,* 716 Phil. 676, 686 (2013).

[41] Article 11 (5) of the RP-US Tax Treaty reads:

Article 11
Dividends

x x x x x x x x x

5. The term "dividends" as used in this Convention means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the corporation making the distribution is a resident. (See *id*. at 98.)

[42] Section 73 (A) of the Tax Code states:

SEC. 73. *Distribution of Dividends or Assets by Corporations*.–

term 'dividends' x x x **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."

In light of the foregoing, the Court therefore holds that the redemption price representing the amount of ₱97,732,314.00 received by GTRC could not be treated as accumulated dividends in arrears that could be subjected to 15% FWT. Verily, respondent's AFS covering the years 2003 to 2009 show that it did not have unrestricted retained earnings, and in fact, operated from a position of deficit.[43] **Thus, absent the availability of unrestricted retained earnings, the board of directors of respondent had no power to issue dividends**.[44] Consistent with Section 73 (A) of the Tax Code, this rule on dividend declaration – *i.e.,* that it is dependent upon the availability of unrestricted retained earnings – was further edified in Section 43 of The Corporation Code of the Philippines[45] which reads:

Section 43. *Power to Declare Dividends*. — **The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them:** *Provided*, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from

---

(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.**

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be. (Emphases and underscoring supplied)

[43] *Rollo*, p. 118.

[44] See *Crucillo v. Office of the Ombudsman,* 552 Phil. 699, 624 (2007)*;* and *Republic Planters Bank v. Agana, Sr.*, 336 Phil. 1, 9-11 (1997).

[45] Batas Pambansa Bilang 68 (May 1, 1980).

the delinquent stockholder until his unpaid subscription is fully paid: *Provided*, *further*, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.

x x x x x x x x x

(Emphasis and underscoring supplied)

It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock[46] which, however, does not obtain in this case. As aptly pointed out by the CTA *En Banc*, the amount of ₱97,732,314.00 received by GTRC did not represent a periodic distribution of dividend, but rather a payment by respondent for the redemption[47] of GTRC's 3,729,216 preferred shares. In *Wise & Co., Inc. v. Meer*:[48]

> **The amounts thus distributed among the plaintiffs were not in the nature of a recurring return on stock — in fact, they surrendered and relinquished their stock in return for said distributions**, thus ceasing to be stockholders of the Hongkong Company, which in turn ceased to exist in its own right as a going concern during its more or less brief administration of the business *as trustee* for the Manila Company, and finally disappeared even as such trustee.
>
> "The distinction between a distribution in liquidation and an ordinary dividend is *factual*; the result in each case depending on the *particular circumstances of the case and the intent of the parties*. **If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is really *winding up its business* or recapitalizing and narrowing its activities, the distribution may properly**

---

[46] See *Wise & Co., Inc. v. Meer*, 78 Phil. 655 (1947).

[47] "Redemption is repurchase, a reacquisition of stock by a corporation which issued the stock in exchange for property, whether or not the acquired stock is cancelled, retired or held in the treasury." (*CIR v. Court of Appeals*, 361 Phil. 103, 124 (1999); citations omitted.)

[48] *Supra* note 46.

> **be treated as in complete or partial liquidation and as payment by the corporation to the stockholder for his stock.** The corporation is, in the latter instances, wiping out all parts of the stockholders' interest in the company * * * ." (Montgomery, Federal Income Tax Handbook [1938-1939], 258 x x x)[49] (Emphases and underscoring supplied)

All told, the amount of ₱97,732,314.00 received by GTRC from respondent for the redemption of its 3,729,216 preferred shares were not accumulated dividends in arrears. Contrary to petitioner's claims, it is therefore not subject to 15% FWT on dividends in accordance with Section 28 (B) (5) (b) of the Tax Code.

WHEREFORE, the petition is **DENIED**. The Decision dated August 14, 2014 and the Resolution dated January 5, 2015 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 1041 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*), *Bersamin, Jardeleza,*[*] and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218809. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN EGAGAMAO**, *accused-appellant.*

---

[49] *Id*. at 669.

[*] Designated as Additional Member per Raffle dated July 25, 2016.