Supreme Court E-Library

FIRST DIVISION

[G.R. No. 192023. November 21, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **JERRY OCIER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE COURT OF TAX APPEALS *EN BANC* HAS A POSITIVE DUTY AS A COURT OF LAW TO CONSIDER AND GIVE DUE REGARD TO EVERYTHING ON RECORD RELEVANT AND COMPETENT TO ITS RESOLUTION OF THE ULTIMATE ISSUE PRESENTED FOR ITS ADJUDICATION. — [T]he CTA *En Banc* thereby correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence. Such offer of evidence was indispensable to the consideration of the evidence by the trial court. x x x. Nonetheless, the petitioner's failure to establish the nature of the transaction as a sale between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA *En Banc* from resolving the issue *in favor* of the petitioner. There was enough proof extant in the records on which to base a ruling *against* the respondent. The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to *everything* on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication. Even if the CTA *En Banc* could not validly consider and appreciate any matter that had not been formally offered by the petitioner, it could not turn a blind eye as to disregard the record that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission. The CTA *En Banc* was all too aware of the presence of such proof in the records because it precisely declared that "the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted." Thus, the CTA *En Banc* gravely erred in upholding the ruling of the CTA in Division.

Supreme Court E-Library

2. TAXATION; NATIONAL INTERNAL REVENUE CODE; CAPITAL GAINS TAX (CGT); IMPOSED ON 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; TRANSFER OF SHARES TO ANOTHER, EVEN AS A STOCK LOAN, IS WITHIN THE CONCEPT AND CONTEXT OF A DISPOSITION SUFFICIENT FOR THE CGT LIABILITY TO ATTACH.— The respondent's insistence that he was not liable for the CGT and DST because he had only loaned his shares to Tan without any consideration therefrom, being unsubstantiated, must fail. The respondent's admission of transferring the 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment of the CGT. It is worthy to underscore that the respondent never claimed exemption from the CGT. His denial of liability solely rested on the fact that the transfer of his shares had been a stock loan, not a sale. Still, the transfer even in that manner came within the concept and context of a *disposition* sufficient for the CGT liability to attach pursuant to Section 24(C) of the *National Internal Revenue Code* (NIRC) x x x. As the provision textually indicates, the CGT is imposed on 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. The term *disposition*, being neither defined nor qualified in Section 24(C), is accorded its ordinary meaning, *that is*, any act of disposing, transferring to the care or possession of another, or the parting with, alienation of, or giving up of property. With the respondent himself not disputing (but actually admitting) the transfer of the 4.9 million shares of BW Resources to Tan, such manner of disposition of the shares was definitely within the contemplation of Section 24(C) of the NIRC.

3. ID.; ID.; ID.; ANY DIFFICULTY IN THE COMPUTATION OF THE NET CAPITAL GAINS UPON WHICH THE TAXPAYER'S CAPITAL GAINS TAX LIABILITY IS IMPOSED IS NOT SUFFICIENT BASIS TO EXEMPT HIM FROM HIS TAX LIABILITY.— We must note, however,

Supreme Court E-Library

that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982. Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000, which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc*'s conclusion that the transfer of the shares remained uncontroverted. Any difficulty in the computation of the net capital gains upon which the respondent's CGT liability was imposed did not, therefore, constitute sufficient basis to exempt him from his tax liability. Accordingly, we need to remand the case to the CTA for the proper determination of the amount of net capital gains and his corresponding CGT liability.

4. ID.; ID.; DOCUMENTARY STAMP TAX; AN EXCISE TAX ON THE EXERCISE OF A RIGHT OR PRIVILEGE TO TRANSFER OBLIGATIONS, RIGHTS OR PROPERTIES INCIDENT THERETO; A TRANSFER OF SHARES OF STOCKS IS SUBJECT TO DOCUMENTARY STAMP TAX. — Anent the assessment for the deficiency DST, the respondent was similarly liable. The DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto, but, for clarity, we have to point out that the subject of the DST is not limited to the document embodying the enumerated transactions. The DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. The transfer of the shares of stocks is an exercise of the privilege to transfer a right and properties incident thereto that is embodied in the stock loan agreement/ trust declaration. Accordingly, the transaction between the respondent and was properly subjected to the DST.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Valdez Anigan & Associates for respondent.

Supreme Court E-Library

D E C I S I O N

BERSAMIN, *J.*:

The claimant's failure to formally offer his evidence renders his evidence incompetent for consideration by the trial court. But the claimant's cause is not necessarily lost if other evidence on record as well as the adverse party's own admissions can support the former's claim. Every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.

The taxpayer is liable to pay capital gains taxes for the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except if the sale or disposition is through the stock exchange. For this purpose, the term *disposition* includes any act of disposing, transferring or parting with, or alienation of, or giving up of property to another.

The Case

Before the Court is the appeal by the Commissioner of Internal Revenue from the February 2, 2010 decision promulgated in C.T.A. E.B. No. 491,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) unanimously affirmed the cancellation of the final assessment notices for the deficiency capital gains taxes (CGT) and documentary stamp taxes (DST) amounting to ₱17,862,848.21 and ₱71,703.76, respectively, issued by the Bureau of Internal Revenue (BIR) against the respondent.

Antecedents

On January 31, 2001, the respondent received an assessment notice from the BIR to the effect that he had incurred deficiencies in the CGT and DST for the year 1999.[2] The deficiency assessments arose from the gains that he had realized from the sale of shares of stock of Best World Resources Corporation

---

[1] *Rollo*, pp. 31-47.

[2] *Id.* at 274.

Supreme Court E-Library

(BW Resources) through over-the-counter transactions. It appears that based on the BIR's investigation the sale/exchange of shares was related to the stock manipulation and insider trading scandal orchestrated by Dante Tan and his associates involving BW Resources shares that affected the Philippine Stock Exchange in 1999.[3]

On April 19, 2001, the respondent sent his letter-reply to the BIR alleging that the BIR had erroneously considered as a sale the transfer of a total of 4.9 million BW Resources shares from his account to Tan when it was actually a loan.[4]

On September 26, 2001, the respondent received from the BIR Assessment Notice No. BW-99-DST-0041-01 and Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001 assessing him the deficiency DST and CGT, inclusive of increments, in the respective amounts of ₱71,703.76 and ₱17,862,848.21.[5] He protested the assessments on October 12, 2001,[6] but the BIR denied his protest on March 10, 2003.[7]

On June 16, 2003, the respondent received the notice of preliminary collection of the deficiency assessments,[8] and filed his reply on July 30, 2003.[9]

On December 5, 2003, the respondent filed a petition for review in the CTA to seek the cancellation of the deficiency assessments.[10] The case, docketed as C.T.A. Case No. 6831, was assigned to and heard by the Second Division of the CTA (CTA in Division).

---

[3] *Id*. at 156-161.

[4] *Id*. at 32.

[5] *Id*. at 275-276.

[6] *Id*. at 32.

[7] *Id*. at 277-284.

[8] *Id*. at 276.

[9] *Id*. at 33.

[10] *Id*. at 73-86.

Supreme Court E-Library

On February 2, 2009, after trial, the CTA in Division rendered its decision,[11] disposing thusly:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated March 10, 2003, is **REVERSED AND SET ASIDE**. The Final Assessment Notice Nos. BW-99-CGT-0040-01 and BW-99-DST-0041-01, both dated September 10, 2001, assessing petitioner for deficiency CGT and DST in the amounts of ₱17,862,848.21 and ₱71,703.76, respectively, inclusive of interest, surcharge and compromise penalty for taxable year 1999 is hereby ordered **CANCELLED**.

SO ORDERED.[12]

The petitioner moved for reconsideration of the decision,[13] but the CTA in Division denied the motion for reconsideration on April 21, 2009.[14]

The petitioner elevated the adverse decision to the CTA *En Banc* by petition for review (CTA EB No. 491).[15]

On February 2, 2010, the CTA *En Banc* rendered the assailed decision in CTA EB No. 491, disposing:

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the February 2, 2009 Decision and April 21, 2009 Resolution of the *CTA Second Division* in CTA Case No. 6831 entitled, "*Jerry Ocier vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED *in toto***.

SO ORDERED.[16]

The CTA *En Banc* denied the petitioner's motion for reconsideration on April 20, 2010.[17]

---

[11] *Id*. at 87-109.

[12] *Id*. at 108.

[13] *Id*. at 110-125.

[14] *Id*. at 127-134.

[15] *Id*. at 135-153.

[16] *Id*. at 46.

[17] *Id*. at 48-50.

Supreme Court E-Library

Hence, this appeal by the petitioner.

Issues

The petitioner submits that the CTA *En Banc* erred as follows:

I

THE APPELLATE COURT ERRED WHEN IT HELD THAT PETITIONER'S FAILURE TO FORMALLY OFFER HIS EVIDENCE IS FATAL TO HIS CAUSE.

II

THE APPELLATE COURT ERRED WHEN IT HELD THAT THE PIECES OF EVIDENCE PRESENTED BY PETITIONER AND ATTACHED TO THE RECORDS ARE STILL INSUFFICIENT TO ESTABLISH RESPONDENT'S TAX LIABILITY

III

THE APPELLATE COURT ERRED WHEN IT AFFIRMED *IN TOTO* THE DECISION OF THE CTA SECOND DIVISION WHICH 1) GRANTED RESPONDENT'S PETITION FOR REVIEW, 2) REVERSED AND SET ASIDE PETITIONER'S DECISION DATED MARCH 10, 2003, and; 3) CANCELLED FINAL ASSESSMENT NOTICE NOS. BW-99-CGT-0040-01 AND BW-99-DST-0041-01, BOTH DATED SEPTEMBER 10, 2001.[18]

Otherwise stated, the issue is whether the cancellation of Assessment Notice No. BW-99-CGT-0040-01 and Assessment Notice No. BW-99-DST-0041-01 for failure on the part of the petitioner to prove the respondent's liability for the CGT and DST arising from the gains he had allegedly realized from the sale of BW Resources shares was proper.

Ruling of the Court

The appeal is meritorious.

The petitioner does not deny the failure to formally offer BIR's evidence against the respondent, but insists that such failure was not fatal considering that the respondent's liability

[18] *Id*. at 12.

Supreme Court E-Library

for the CGT and DST for the transfer of the BW Resources shares had still been established by the evidence on record. Even so, the petitioner contends that the CTA *En Banc* should still have relied also on BIR's pieces of evidence, even if not formally offered, because said pieces of evidence had been duly identified by Josephine D. Madera, Revenue Officer of the National Investigation Division of the BIR, and incorporated in the records of the case.

The petitioner's contention cannot be sustained.

The CTA *En Banc* ruled on the matter as follows:

> x x x [Respondent failed to comply with the directives of this Court, despite having been given more than three (3) opportunities to file is required Formal Offer of Evidence. It must be remembered that it was respondent's counsel, upon termination of the presentation of evidence, who moved to be given thirty (30) days to file his Formal Offer of Evidence, x x x:
>
> x x x x x x x x x
>
> The foregoing circumstances evidently manifest leniency accorded to respondent's counsel, and it is readily apparent that he allowed almost a year to pass without filing his Formal Offer of Evidence. As can be gleaned from the discussions in Our assailed Decision, despite respondent's failure to formally offer his evidence, and very much contrary to his assertion in the instant Motion for Reconsideration, this Court not only relaxed the application of our procedural rules, specially that pertaining to the formal offer of evidence, but in fact, took into consideration and carefully examined the pieces of evidence duly marked and identified in the testimony of respondent's witness, Josephine D. Madera. Sadly for respondent however, the Court found the pieces of evidence presented by respondent and attached to the records of this case, still insufficient to establish petitioner's supposed tax liability. Our assailed Decision provides:
>
> > 'Thus, We look into the evidence presented by respondent, the oral testimony of Josephine D. Madera, Revenue Officer-National Investigation Division of the BIR, who testified by way of Judicial Affidavits dated October 5 and March 5, 2006, and specific documents which she identified therein that are attached to the docket of this case.

Supreme Court E-Library

In her affidavits, she identified the following attached documents, to wit: Memorandum for the Commissioner dated November 21, 2000, Memorandum for the Deputy Commissioner dated November 15, 2001, various In and Out Receipts, Security Movement Report, and Letter of Instruction signed by a certain Jerry Go.

A perusal of the identified 'In and Out Receipts' shows that these were issued to a certain Jerry with the surnames of Ong, Ng, Go, with the exception of 'Out' Receipt No. 0060154 issued by Eastern Securities Development Corporation showing delivery of BW Resources Corporation shares to Jerry Ocier on September 3, 1999. Nevertheless, the latter receipt is a mere photocopy and therefore without evidentiary value.

In the Memorandum for the Commissioner dated November 21, 2000 and Memorandum for the Deputy Commissioner of the Legal and Inspection Group of the Bureau of Internal Revenue dated November 15, 2001, it was mentioned therein that the subject over-the-counter transfers involve Jerry Ocier, Jerry O. Ng and Jerry Go, who are allegedly one and the same as evidenced by the attached client's information form and an officer (Vice-President) of Eastern Securities. Notably however, this client information was never presented and the Court cannot make a proper determination of the veracity of such conclusion.

x x x x x x x x x

Although in the Memorandum dated November 15, 2001, it was stated therein that the requisites under Section 228 of Republic Act No. 8424 as implemented by Revenue Regulations No. 12-99, that assessment state the factual and legal bases were fully satisfied with, whereby annexes and details of discrepancies attached to the assessment received furnished all the necessary information in compliance with the said regulations, presenting the important points of the taxable over-the-counter transactions, the said annexes were never presented nor formally offered in evidence by respondent.

Thus, We cannot determine with reasonable certainty the legal and factual basis of respondent's assessment, as there was neither a clear showing of an actual sale of shares of stock, nor evidence to support its basis for computing the subject assessment.

Supreme Court E-Library

x x x x x x x x x

On another point, respondent relies on the exception to the Rules on Formal Offer of Evidence a set forth in **Vda. De Oñate** case in seeking a reconsideration of Our assailed Decision. To put respondent's mind at rest, the Court looked into the possibility of applying the Oñate ruling in this case.

It must be pointed out, however, that respondent failed to meet the two (2) requirements set forth therein which would have allowed application of the invoked exception, namely, *first*, the same (evidence) must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.

In the instant case, although the BIR records were duly incorporated as part of the records of this case by virtue of the mandatory transmittal of the BIR records to this Court, the documents contained in the BIR Records were not marked or identified by respondent's lone witness, Josephine D. Madera.

With regard to respondent's 'In' and 'Out' documents, respondent's allegation that the same are admissible since they were impliedly admitted by petitioner is erroneous. Records bear that the request for admission by respondent, though not opposed by petitioner, was not favorably resolved by this Court. Consequently, the 'In' and 'Out' documents remained only as provisionally marked and without evidentiary value.[19]

In our view, the CTA *En Banc* thereby correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence. Such offer of evidence was indispensable to the consideration of the evidence by the trial court. The necessity of the formal offer of evidence has been suitably stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[20] thusly:

Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its

---

[19] *Id.* at 41-45.

[20] G.R. No. 197515, July 2, 2014, 729 SCRA 113, 121-124.

Supreme Court E-Library

business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

> SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in Vda. de Oñate v. Court of Appeals, thus:

> From the foregoing provision, **it is clear that for evidence to be considered, the same must be formally offered**. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In Interpacific Transit, Inc. v. Aviles [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in People *v.* Napat-a [179 SCRA 403 (1989)] citing People *v.* Mate [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**.

The evidence may, therefore, be admitted provided the following requirements are present: (1) the same must have been duly identified

Supreme Court E-Library

by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

In the case at bar, petitioner categorically admitted that it failed to formally offer the PANs as evidence. Worse, it advanced no justifiable reason for such fatal omission. Instead, it merely alleged that the existence and due execution of the PANs were duly tackled by petitioner's witnesses. We hold that such is not sufficient to seek exception from the general rule requiring a formal offer of evidence, since no evidence of positive identification of such PANs by petitioner's witnesses was presented. Hence, we agree with the CTA En Banc's observation that the 1994 and 1998 PANs for EWT deficiencies were not duly identified by testimony and were not incorporated in the records of the case, as required by jurisprudence.

While we concur with petitioner that the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of PANs as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting evidence. More so, the same is the only means by which the CTA may ascertain and verify the truth of respondent's claims. We are, therefore, constrained to apply our ruling in *Heirs of Pedro Pasag v. Spouses Parocha*, viz.:

> x x x. **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.** Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, **this allows opposing parties to examine the evidence and object to its admissibility**. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit

Supreme Court E-Library

an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."

Nonetheless, the petitioner's failure to establish the nature of the transaction as a sale between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA *En Banc* from resolving the issue *in favor* of the petitioner. There was enough proof extant in the records on which to base a ruling *against* the respondent. The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to *everything* on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication. Even if the CTA *En Banc* could not validly consider and appreciate any matter that had not been formally offered by the petitioner, it could not turn a blind eye as to disregard the record that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission.[21] The CTA *En Banc* was all too aware of the presence of such proof in the records because it precisely declared that "the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted."[22] Thus, the CTA *En Banc* gravely erred in upholding the ruling of the CTA in Division.

The respondent's insistence that he was not liable for the CGT and DST because he had only loaned his shares to Tan without any consideration therefrom,[23] being unsubstantiated, must fail.

The respondent's admission of transferring the 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment

---

[21] *Rollo*, pp. 267-31.

[22] *Id*. at 98.

[23] *Id*. at 278-279.

Supreme Court E-Library

of the CGT. It is worthy to underscore that the respondent never claimed exemption from the CGT. His denial of liability solely rested on the fact that the transfer of his shares had been a stock loan, not a sale. Still, the transfer even in that manner came within the concept and context of a *disposition* sufficient for the CGT liability to attach pursuant to Section 24(C) of the *National Internal Revenue Code* (NIRC), which provides:

> **(C) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.** — The provisions of Section 39(B) notwithstanding, 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.
>
> | | |
> |---|---|
> | Not over ₱100,000 | 5% |
> | On any amount in excess of ₱100,000 | 10% |

As the provision textually indicates, the CGT is imposed on 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. The term *disposition*, being neither defined nor qualified in Section 24(C), is accorded its ordinary meaning, *that is*, any act of disposing, transferring to the care or possession of another, or the parting with, alienation of, or giving up of property.[24] With the respondent himself not disputing (but actually admitting) the transfer of the 4.9 million shares of BW Resources to Tan,[25] such manner of disposition of the shares was definitely within the contemplation of Section 24(C) of the NIRC.

Verily, the following submissions by the CIR are appropriate, and should be reiterated, to wit:

> x x x Contrary to common sense and sound business practice, the taxpayer would like us to believe that he parted from his substantial

---

[24] *Black's Law Dictionary*, 6th Edition.

[25] *Rollo*, pp. 278-279.

Supreme Court E-Library

holdings for no rhyme or reason whatsoever. Be that as it may, even the letter cannot be considered a stock loan agreement let alone a trust declaration since the terms of the agreement were not specified. In fact, there is no agreement or contractual stipulations to speak of e.g. when are the shares to be returned. For lack of evidence and any semblance of plausibility, we seriously doubt the legitimacy let alone the efficacy of the said letter purporting to be a stock loan agreement. Further, no amount of sworn affidavits would substitute nor cure the real agreement, if any. This, the taxpayer failed to do despite representations to the contrary.

More so, the taxpayer cannot call upon **BIR Ruling (DA-013-1-10-97)** claiming that the transaction is in the nature of a trust declaration and therefore not a taxable transaction. The ruling is not at all applicable. On the contrary, it weakens the taxpayer's position since in that situation there was a trust agreement expressly executed by the parties; and what was transferred was only the legal title to the shares. The nominee was not the true, actual, and beneficial owner of the shares involved. The same is true with **BIR Ruling No. 029-90**.

x x x x x x x x x

What mystifies an otherwise straightforward case, is the use or misuse of the EQ Trade Facility. As earlier mentioned, trading is not done in the trading floor but directly between two parties. The PCD, aside from being a depository, is the place where settlement of securities takes place. It utilizes scripless trading.

> In scripless trading, settlement is carried out via BES. Book-entry system or (BES) is a system used to record the ownership of shares. When a trade is done at the PSE, securities are moved via electronic debit and credit of Participant's securities accounts to effect settlement. There will be no need for the physical movement of stock certificate (scrip) between buyer or seller. (Underlining Supplied)

It is readily evident from the foregoing, that the facility used at the time to transfer the shares is open to possible abuse. It leaves behind very nominal amount of paper trail since transactions are done electronically. Without the existence of checks and counter-checks, the same can be a source of fraud.

This brings us to the second contention of the taxpayer. Mr. Ocier takes refuge in the fact that there are no rules or regulations prohibiting the EQ Trade Facility. Though in practice this may be true, this does

Supreme Court E-Library

not negate the fact that there was a transfer of shares and there was a change in beneficial ownership. Evidence of payment is therefore not pertinent when the transfer and change of beneficial ownership is established from the point of view of taxation. In the case at bar, the transfer was not just to one individual but to several.[26]

We must note, however, that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982.[27] Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000,[28] which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc*'s conclusion that the transfer of the shares remained uncontroverted. Any difficulty in the computation of the net capital gains upon which the respondent's CGT liability was imposed did not, therefore, constitute sufficient basis to exempt him from his tax liability. Accordingly, we need to remand the case to the CTA for the proper determination of the amount of net capital gains and his corresponding CGT liability.

Anent the assessment for the deficiency DST, the respondent was similarly liable. The DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto,[29] but, for clarity, we have to point out that the subject of the DST is not limited to the document embodying the enumerated transactions. The DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.[30] The transfer of the shares of stocks

---

[26] *Id*. at 280-282.

[27] Records, Volume I, p. 216.

[28] *Id*. at 215-216.

[29] *Commissioner of Internal Revenue v. Manila Bankers' Life Insurance Corporation*, G.R. No. 169103, March 16, 2011, 645 SCRA 500, 509.

[30] *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 174134, July 30, 2008, 560 SCRA 606, 621.

Supreme Court E-Library

is an exercise of the privilege to transfer a right and properties incident thereto that is embodied in the stock loan agreement/ trust declaration. Accordingly, the transaction between the respondent and was properly subjected to the DST.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on February 2, 2010 and the resolution promulgated on April 20, 2010 in C.T.A. E.B. No. 491; **UPHOLDS** and **AFFIRMS** Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001, subject to the proper determination of the amount of respondent's deficiency Capital Gains Tax by the Court of Tax Appeals as hereby directed; **REMANDS** to the Court of Tax Appeals the issue of the respondent's deficiency Capital Gains Tax for the proper determination of the amount of liability; **UPHOLDS** and **AFFIRMS** Assessment Notice No. BW-99-DST-0041-01 dated September 10, 2001 for deficiency Documentary Stamp Taxes amounting to ₱71,703.76; and **DIRECTS** the respondent to pay the costs of suit.

SO ORDERED.

Del Castillo, Jardeleza, Tijam, and *Gesmundo*,[*] *JJ.*, concur.

---

[*] Additional Member, per Special Order No. 2609 dated October 11, 2018.