REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAKA INVESTMENTS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5428

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 19 1999

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DECISION

This is a petition for review filed by petitioner, JAKA INVESTMENTS CORPORATION, against respondent Commissioner of Internal Revenue for the latter's failure to act on the petitioner's claim for refund in the amount of ₱410,367.00 allegedly representing its excess documentary stamp tax (DST) and surcharges it paid on October 14, 1994.

As represented, petitioner is a domestic corporation engaged in making investments in other corporations for the benefit of its stockholders. On September 5, 1994, petitioner and JAKA Equities Corporation (formerly Eurasia Match, Inc.) executed an "Amended Subscription" whereby petitioner would subscribe to the common shares of stocks of JAKA Equities with an equivalent total par value of ₱508,806,200.00 out of the increase in the

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authorized capital stock of the latter from ₱185,000,000.00 to ₱2,000,000,000.00.

As payment for the above subscription, petitioner assigned and transferred 154,208,483 shares of stocks it owned in Republic Glass Holdings Corp. (RGHC), 2,822,500 shares of stocks it owned in Philippine Global Communications, Inc. (Philcom), and 7,495,488 shares of stocks it owned in United Coconut Planter's Bank (UCPB) to JAKA Equities Corporation. Although petitioner had originally intended to include the 1,313,176 shares of stocks of Far East Bank and Trust Company (FEBTC), among the shares to be transferred to JAKA Equities by virtue of a tax free exchange, petitioner, instead paid the amount of ₱370,766,000.00 in lieu of the said FEBTC shares.

On October 14, 1994, petitioner paid the respondent the amount of ₱1,003,895.65 (Exh. B) representing the documentary stamp tax and surcharges due on the execution of the Amended Subscription Agreement and Deed of Assignment dated September 5, 1994, which petitioner alleges to have erroneously included the cash payment of the subscription price, broken down as follows:

Basic Documentary Stamp Tax	₱ 803,116.72
25% Surcharge	200,778.93
Total Amount Payable	₱1,003,895.65

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On October 17, 1994, Revenue District Officer of Revenue District No. 48, West Makati, Atty. Sixto S. Esquivias IV, issued three certifications, as follows:

Cert. No.	Shares of Stocks	Documentary Stamp Tax
94-10-17-07 (Exhibit C)	7,495,488 UCPB shares	₱ 23,423.14
94-10-17-08 (Exhibit D)	154,208,403 RGCH shares	481,901.88
94-10-17-14 (Exhibit E)	2,822,500 Philcom shares	88,203.13
		₱593,528.15

On October 11, 1996, petitioner filed an administrative claim for refund in the amount of ₱410,367.00, representing the difference between the aforementioned amount actually paid totaling ₱1,003,895.65 (Exh. B) and the petitioner's alleged amount due (₱593,528.15, Exh. F-2) on the execution of the Amended Subscription Agreement and Deed of Assignment of Property.

On the same date, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that the tax base for the computation of the DST on the "Amended Assignment of Property in Payment of Subscription" should have been limited to the shares stated therein to the exclusion of the FEBTC shares. In other words, petitioner wants to impress upon this Court that its acquisition of the common stocks of

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JAKA Equities Corporation in exchange for cash amounting to ₱370,766,000.00 in substitution for, or replacement of, the 1,313,176 FEBTC shares, should not be included in the taxable base for the computation of documentary stamp tax (DST), hence, it is entitled to the refund of the amount of ₱410,367.00.

Respondent on the other hand, in her Answer raised the following special and affirmative defenses, thus:

> (1) the claim for refund was not filed within a reasonable time before the lapse of the 2-year period in order to give the respondent a chance to act on it;
>
> (2) the payment of the documentary tax under the Authority to Accept Payment was made in accordance with law, rules and regulations, hence, not erroneous nor refundable;
>
> (3) x x x petitioner failed to show that the capital gains tax and DST due for such transaction were paid with the respondent's Bureau;
>
> (4) in claiming for refunds, it is incumbent upon petitioner to prove that it is indeed entitled thereto. x x x;
>
> (5) claims for refund are strictly construed against the claimant x x x; and
>
> (6) it is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code.

It is already well-settled that there is no legal impediment in filing the administrative claim for refund with the BIR simultaneously with the petition for review with this Court as long as these two acts fall within the

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two-year prescriptive period prescribed by Section 230 of the Tax Code (see **Gibbs vs. Collector, L-153543, February 29, 1960 and Manila Electric Company vs, The Commissioner of Internal Revenue, CTA Case No. 5091, October 2, 1997**). Hence, the issue of the timeliness of the instant petition is out of order.

The focal issue which is presented for our consideration is whether or not the transfer of the 1,313,176 FEBTC shares under the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" should be excluded in the taxable base for the computation of DST, thus entitling petitioner to the refund of the amount of ₱410,367.00.

We find nothing ambiguous nor obscure in the language of Section 173, taken in relation to Section 175 of the 1994 Tax Code (quoted hereunder) insofar as the same is brought to bear upon the circumstances in the instant case. These provisions furnish the best means of their own exposition that a documentary stamp tax (DST) is due and payable on documents, instruments, loan agreements and papers, acceptances, assignments, sales and transfers which evidenced the transaction agreed upon by the parties and should be paid by the person <u>making, signing, issuing, accepting or transferring</u> the property, right or obligation.

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> "Section 173. - ***Stamp taxes upon documents, instruments, and papers.*** - Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, whenever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. *(as amended by R. A. No. 7660.)*
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> **SEC. 175.** ***Stamp tax on original issue of certificates of stock.*** - On every original issue, whether on organization, re-organization or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of <u>one peso and seventy centavos on each two hundred pesos or fractional part thereof, of the par value</u> of such certificates: **Provided,** That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed all be based upon the actual consideration received by the association, company, for corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share. *(As amended by PD 1457 and PD 1959)*

Understood to mean what it plainly expressed, the DST imposition is essentially addressed and directly brought to bear upon the DOCUMENT evidencing the transaction of the parties which establishes its rights and obligations.

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In the case at bar, the rights and obligations between petitioner JAKA Investments Corporation and JAKA Equities Corporation are established and enforceable at the time the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" were signed by the parties and their witness, so is the right of the state to tax the aforestated document evidencing the transaction. DST is a tax on the document itself and therefore the rate of tax must be determined on the basis of what is written or indicated on the instrument itself independent of any adjustment which the parties may agree on in the future (see **American Home Assurance Company vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4222, March 22, 1993**). The DST upon the taxable document should be paid at the time the contract is executed or at the time the transaction is accomplished. The overriding purpose of the law is the collection of taxes. So that when it paid in cash the amount of ₱370,766,000.00 in substitution for, or replacement of the 1,313,176 FEBTC shares, its payment of ₱1,003,835.65 documentary stamps tax pursuant to Section 175 of NIRC is in order.

Thus, applying the settled rule in this jurisdiction that, a claim for refund is in the nature of a claim for exemption, thus, should be construed in *strictissimi juris* against the taxpayer (**Commissioner of Internal**

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Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332) and since the petitioner failed to adduce evidence that will show that it is exempt from DST under Section 199 or other provision of the tax code, We rule the focal issue in the negative.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition is **DISMISSED**, without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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