REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4032

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/6/92

x - - - - - - - - - - - - x

D E C I S I O N

This is a claim for refund of petitioner's alleged overpaid capital gains tax for 1984 in the total amount of P63,723.05.

Petitioner is a domestic corporation organized and existing under the laws ofthe Philippines, with office address at #222 Sen. Gil J. Puyat Avenue, Makati, Metro Manila.

On April 15, 1985 petitioner filed its Final Ajustment Stock Transaction Capital Gains Tax Return for the taxable year ended December 31, 1984. The tax returns show a net capital loss of P3,802,722.30 arrived at as follows:

Name of Company	Number of shares	Unit Selling Price	Total Selling Price	Cost (Including Expenses of Sales)	Gain or (Loss)
Gang-Nail Phils., Inc.	29,000	P21.82	P 632,780	P 290,362.50	P 342,417.50
Jardine Davies, Inc.	785,000	2.00	1,570,000	1,517,604.50	52,395.50
Globe-Mackay Cable & Radio Corp.	375,000	10.00	3,750,000	3,750,000.00	---
Lincoln Philippine Life Insurance Co., Inc.	1,000	160.00	160,000	160,125.00	(125.00)
Intercontinental Garment Manufacturing Corporation	6,260,000	0.04	260,000	4,457,410.30	(4,197,410.30)
TOTALS			P6,372,780	P10,175,502.30	(P3,802,722.30

Petitioner claims that the following payments were made during the same taxable year, totalling P63,723.03:

a. Sale of Gang-Nail Phil., Inc., Shares (P58,483.50)

Selling Price	P623,780.00
Less: Cost	290,362.50
Gain	P342,417,50

Tax Due:

1st P100,000. - 10%	P10,000.00
Excess of P100,000 - 20%	48,483.50
T O T A L	P58,483.50

b. Sale of Jardine Davies Inc. Shares (P5,239.55)

Selling Price	P1,570,000.00
Less: Cost	1,517,604.50
Gain	P 52,395.50
Tax Due at 10%	P 5,239.50

Both the said capital gains of P342,417.50 and P52,395.50 were reported in petitioner's Final Adjustment Stock Transaction Capital Gains Tax Return for the taxable year ended December 31, 1984 (See Exhs. A, A-1, A-3, B, C, D, D-1, D-2, E, R, G, G-1, H, I, I-1, I-2, J, K, L, L-1, L-2, N, M-1, and N-2.)

There being no capital gains tax liability for the year 1984, petitioner now prays for the refund of the said amount of P63,723,05 in the instant petition to toll the 2-year prescriptive period, the claim filed with the BIR's Appellate Division on May 3, 1985 not having been acted upon.

The aforesaid facts are not in dispute and respondent Commissioner of Internal Revenue submitted the case based on the evidence adduced by petitioner and the records of the case.

The only issue is whether or not petitioner is entitled to the refund of P63,723.05 representing its alleged overpaid capital gains tax for 1984.

The Court finds for the petitioner.

1. The respondent never seriously controverted petitioner's evidence entitling it to the refund. As a matter of fact, respondent merely submitted this case for decision on the basis of

the evidence adduced by petitioner, as well as the records of the case, without presenting counter evidence or filing a memorandum.

2. The Court likewise upholds petitioner's claim that it has no capital gains tax liability for 1984, as sustained by evidence, having in fact incurred a net capital loss of P3,802,722.30. Respondent's contention to the contrary is baseless and gratuitous, not having presented any proof to support the same .

WHEREFORE, judgment is hereby rendered in favor of petitioner Jardine Davies Inc. and against respondent, and the latter is directed to refund to the former the amount of P63,723.05, representing erroneously paid capital gains tax for the taxable year ended December 31, 1984.

SO ORDERED.

Quezon City, Metro Manila, August 6, 1992.

STELLA DADIVAS-FARRALES
Acting Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals