Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

JARDINE DAVIES, INC.,
Petitioner,

- versus - C.T.A. Case No. 4324

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

6/22/93

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D E C I S I O N

This is a petition seeking the refund of the amount of P244,174.35 representing alleged overpayment of capital gains tax for taxable year ended December 31, 1987.

Petitioner is a corporation organized and existing under and by virtue of Philippine laws.

The capital gains tax refund arose on account of the following transactions, to wit:

Date of Sale	Shares of Stock Sold	Total Selling Price	Cost (Including Expenses of Sale)	Gain or (Loss)	Capital Gains Tax Paid
1.05.87	Eternit Corporation (90,000 shares)	P 3,245,130.00	P 1,974,258.27	P 1,270,871.73	P 244,174.35
4.28.87	Aircon & Refrigeration Industries, Inc. (240,649 shares)	P 1.00	P 6,143,965.00	P 6,143,964.00	-
TOTALS		P 3,245,131.00	P 8,118,223.27	(P 4,873,092.27)	P 244,174.35

Pursuant to Section 45 (d) of the Tax Code, as amended, petitioner filed with the Bureau of Internal Revenue (BIR) Stock Transaction Capital Gains Tax Return (BIR Form No. 1701-E-2) for each of the above-transactions on January 16, 1987 and May 21, 1987, respectively (Exhibits "C" and "E"). The capital gains tax pertaining to the sale of Eternit Corporation's shares was P244,174.35 and this was paid by petitioner per CBP Confirmation Receipt No. B10600587 and BIR Payment Order No. B9594938, both dated January 19, 1987. (Exhibits "D" and "D-1") A final Adjustment Stock Transaction Capital Gains Tax Return for taxable year ended December 31, 1987 was filed by petitioner on April 15, 1988 showing a refundable amount of P244,174.35. (Exhibit "B")

On January 13, 1989, petitioner filed with the BIR a claim for refund of the 1987 overpaid capital gains tax of P244,174.35. (Exhibit "A") This petition for review was filed with this Court on January 17, 1989 to protect petitioner's right to judicially claim the refund.

Respondent moves for the dismissal/denial of the petition interposing as reasons that it is incumbent upon petitioner to show that the capital losses did not arise or were sustained from wash sales of shares stocks; alleged capital loss sustained from the sale of its shares of stocks in Aircon and Refrigeration Industries, Inc. shall be allowed only to the extent of the gains from such sale; the transaction capital gains tax of 1/4 of 1% applies since no evidence was presented that the shares were not listed and traded on the local stock exchanges and the tax sought to be refunded not illegally or erroneously collected. ("Answer", CTA Records, p. 19-21; "Memorandum", CTA Records, p. 116-122.)

Evidence formally offered by petitioner (Exhibit A - E, inclusive) were neither commented on nor objected to by respondent. Accordingly , the Court resolved to admit all of them without prejudice to the Court's evaluation of their probative value and purposes for which they were offered. ("Resolution", CTA Records, p. 87) The report of investigation on petitioner's claim was likewise not presented hence, respondent's counsel submitted this case solely on the basis of the pleadings.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to a refund/tax credit of the amount of P244,174.35, representing alleged overpaid capital gains tax for taxable year ended December 31, 1987.

Subject of contention by the parties in this case are the related provisions of the Tax Code, quoted below:

> **Section 24 (2)** *Capital gains from sales of shares of stock.*- Capital gains realized from the sale, exchange or disposition of shares of stocks in any domestic corporation shall be taxed as follows:
>
> (A) Net capital gains as defined in Section 33 (a)(2) realized during each taxable year from sale or exchange or other disposition of shares of stock not traded through a local stock exchange.
>
> Not over P100,000.00 - 10%
> Over P100,000.00 - 20%
>
> (B) Capital gains presumed to have been realized from the sale, exchange or disposition of shares of stock listed and traded through a local stock exchange - 1/4 of 1% based on the gross selling price of the share or shares of stock.
>
> xxx xxx xxx
>
> Section 33 (a) Definitions. - As used in this Title -
>
> xxx xxx xxx
>
> (2) Net capital gain. - The term "net capital gain" means the excess of the gains from sales or exchange of capital assets over the losses from such sales or exchanges.
>
> xxx xxx xxx

> **Section 45 (d)** *Return on capital gains realized from sale of shares of stock.* - Every corporation deriving capital gains from the sale or exchange of shares of stock not traded thru a local stock exchange as prescribed under Sections 24 (e)(2)(A), 25 (a)(6)(C)(i) and 25 (b)(5)(C)(i), shall file a return <u>within thirty days after each transaction</u> and a <u>final consolidated return of all transactions during the taxable year on or before the fifteenth day of the fourth month following the close of the taxable year</u>. (Underscoring supplied.)
>
> xxx xxx xxx

As borne out by the records of the case, this involves the sale of shares of stocks not traded through a local stock exchange. Respondent's counsel was not heard to object when petitioner presented as evidence the Stock Transaction Capital Gains Tax Returns (Exhibits "B","C", and "E"), part of which where the Deeds of Sale (CTA Records, pages 37-38 and pages 76-77), clearly showing that the transaction were treated in accordance with Section 24(2)(A) of the Tax Code. The contrary view of respondent that Section 24(2)(B) applies is without any factual or legal basis.

In view of the foregoing, the capital gains tax was computed based on the net capital gains (loss) realized during taxable year 1987. "Net capital gain" is defined by Section 33 (a) as the excess of the gains over the losses from such sales or exchanges. As illustrated in this case, there was a gain in the sale of Eternit Corporation shares of stocks of P1,207,871.73, but a loss in the sale of Aircon and Refrigeration Industries, Inc. shares of stocks of P6,143,964.00, resulting in a net capital loss for 1987 of P4,873,092.27. Since a return is filed after each transaction pursuant to Section 45 (d) of the Tax Code, petitioner paid the capital gains tax of P244,174.35 (Exhibits "D" & "D-1") on the sale of Eternit Corporation's shares of stocks. However when the final consolidated return of all transactions for 1987 was filed, there was a refundable amount of P244,174.35.

The Court had occassion to rule in a similar case involving the same parties and the same nature of evidence presented in C.T.A. Case No. 4032 decided on August 6, 1992, whereby refund of the overpaid capital gains tax on stock transactions for the entire year was ordered.

In summary, We find that petitioner has clearly proven entitlement to the refund being sought. A net capital loss of P4,873,964.00 on all of its stock transactions for 1987 was incurred by petitioner. Capital gains tax of P244,174.35 was undisputedly paid in 1987. There is no finding of deficiency capital gains tax against petitioner for the year under review. Claim for refund was seasonably filed and amply substantiated.

WHEREFORE, respondent Commissioner of Internal Revenue is os hereby ordered to refund/issue tax credit to petitioner Jardine Davies, Inc. the amount of P244,174.35 representing overpaid capital gains tax for taxable year ended December 31, 1987.

SO ORDERED.

Quezon City, Metro Manila, June 22, 1993.

MANUEL K. GRUBA
Associate Jugde

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals