REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA GENERAL INSURANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5905

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

Promulgated:
JUL 12 2002

x -- x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P750,000.00, allegedly representing petitioner's erroneously paid Documentary Stamp Tax (DST) on its original issuance of stock certificates covering P75,000,000.00 worth of shares to its stockholders.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 11/F Multinational Bancorporation Centre, 6805 Ayala Avenue, Makati City. It is authorized to engage in non-life insurance business (*CTA Records, p.1).*

On October 7, 1996, petitioner was incorporated with an authorized capital stock of P200,000,000.00, P75,000,000.00 of which was subscribed and fully paid by the stockholders (*Exhs. A, A-1-a to Exh. A-1-c*).

On January 8, 1997, the Securities and Exchange Commission (SEC) approved its incorporation. Thereafter, petitioner allegedly caused the payment of the Documentary Stamp Tax (DST) in the total amount of P750,000.00 for the original issuance of stock certificates covering P75,000,000.00 worth of shares to its stockholders.

On July 9, 1997, petitioner's Corporate Secretary, who holds office at the separate address of 32/F Tower One, Ayala Triangle, Ayala Avenue, Makati City, allegedly paid the same amount of P750,000.00 through the Documentary Stamps Metering Machine of Ayala Land, Inc. (ALI).

Subsequently, Ayala Land Inc. sent a Statement of Account to the petitioner and asked for the reimbursement of the amount of P750,000.00 which it paid as documentary stamp tax in behalf of the latter. It was then that the "double payment" was discovered.

On July 9, 1999, petitioner filed a letter with the Bureau of Internal Revenue requesting for the refund of the DST it erroneously paid on July 9, 1997 in the amount of P750,000.00 *(Exhibit N).*

On the same date, petitioner filed this Petition for Review in order to comply with the two-year reglementary period provided for under Section 229 of the Tax Code, as amended.

After trial on the merits, this Court rendered a Decision dated June 7, 2000 which denied the petition for insufficiency of evidence, pertinent portion of which reads as follows:

> " In the case at bar, Petitioner failed to support its claimed "double payment" of DST by substantial evidence. Substantial evidence has been construed to mean not necessarily preponderant proof as is required in an ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion." **(De Lamera**

> **vs. Court of Agrarian Relations, et al., 17 SCRA 368).** The evidence presented by Petitioner established that the latter indeed paid on July 9, 1997 the amount of P750,000.00 as DST for the 7,500,000 shares of stocks it issued to its stockholders thru the DST metering machine of ALI (Exhs. C to M) but failed to establish that on January 8, 1997 it earlier paid the same amount of P750,000.00 to the Respondent as payment for the DST of the same shares of stocks. The court finds that the documents presented by the Petitioner as evidence (Exhs. B to B-2) to support its claim of payment of DST on January 8, 1997 are not conclusive proof that Petitioner has paid the subject DST to the Respondent. The said Exhibits B and B-1 can only confirm the fact that there was a request for a preparation of a check amounting to P750,000.00 for DST on stock certificates and that a cash voucher was prepared for that amount, whereas, Exh. B-2 merely refers to a tax payment to the bank by petitioner without mention that it is for the DST of the subject certificates of stocks. Thus, the doubt on the alleged "first payment". The best evidence that Petitioner should have presented to support its claimed "first payment" of DST was the Authority To Accept Payment (ATAP), which is necessary before payment of documentary stamp tax can be effected. Petitioner not only failed to present such document; it also failed to explain the loss thereof, assuming they had existed before. The bank validation on the ATAP and the ATAP itself will serve as Petitioner's official receipt that will prove that indeed the amount of P750,000.00 allegedly constituting the "first payment" of DST was paid and remitted to the Government." (*CTA Records, pp.116-117*)

On June 30, 2000, petitioner filed a Motion for New Trial on the ground of newly discovered evidence. In its motion, petitioner alleged that sometime after receipt of the Court's decision, petitioner's counsel was able to obtain from the Revenue Accounting Division of the Bureau of Internal Revenue a certification that the amount of P750,000.00 was verified to have been remitted by the Ayala General Insurance Corporation to the Bureau of Internal Revenue on January 8, 1997 through a bank with Bank Code 010-063 under BCS No. 97-00006. Such certification, according to petitioner, constitutes a newly discovered evidence under Rule 37 of the Revised Rules of Court which is a ground for the grant of a new trial.

On August 9, 2000, this court issued a resolution denying petitioner's motion, thus:

> " It seemed to the Court that the "Certification" which Petitioner sought to present at the new trial does not qualify as "newly discovered evidence" but is merely "forgotten evidence." The "Certification" was dated January 4, 2000 and during this time the case was still on trial. With the exercise of reasonable diligence, the same could have been produced and presented by Petitioner during the trial of the case. Presumably, such evidence has been in existence since January 4, 2000, waiting only to be presented by Petitioner. More so, Petitioner failed to adduce any evidence to prove that the same could not have been discovered and produced during trial despite the exercise of reasonable diligence. Only after the denial of its claim that it was able to get a copy of said certification. Thus, since Petitioner failed to comply with the requisites, for the grant of new trial with "newly discovered evidence" as ground, particularly letter (b) thereof which states that "such evidence could not have been discovered and produced at the trial with reasonable diligence," the Court has no other recourse but to deny the instant motion.
>
> **ACCORDINGLY,** Petitioner's instant "Motion for New Trial" is hereby **DENIED** for lack of merit."

On August 16, 2000, petitioner filed a Motion for Reconsideration. However, on August 24, 2000, petitioner filed a "Motion to Withdraw" the motion for reconsideration for the reason that it has instead decided to appeal with the Court of Appeals. The Court granted the motion in a resolution dated September 6, 2000.

On January 15, 2001, the Court of Appeals rendered a decision finding the petition for review of the petitioner meritorious. The relevant parts of the decision are quoted hereunder:

> "In sum, the Court finds the subject Certification as newly discovered evidence within the contemplation of Section 1, Rule 37 of the 1997 Rules of Civil Procedure.

> **WHEREFORE**, premises considered, the petition is hereby **GRANTED**; and the challenged 07 June 2000 Decision and the 09 August 2000 Resolution of the respondent Court of Tax Appeals be **SET ASIDE**. Let the case be **REMANDED** to the respondent Court of Tax Appeals for new trial. No costs" (*CTA Records, p.263*).

Subsequently, the records of the case were returned to this court for new trial. On the scheduled hearing on August 27, 2001, petitioner presented the duplicate original copy of Authority to Accept Payment (ATAP) No. 4099085 dated January 7, 1997 issued to taxpayer Ayala General Insurance Corporation for the amount of P750,000.00 (*Exhibit O*) and a xerox copy of the certification dated January 4, 2000 issued by the Chief of the Revenue Accounting Division of the Bureau of Internal Revenue (*provisionally marked as Exhibit P*). Petitioner likewise presented as witness, Ms. Ma. Josefina Cecilia Dionisio, who testified that it was the first time Exhibit O was presented as it was only last year (2000) that the same was finally located. Counsel for the petitioner also promised to present the certified true copy of Exhibit P in his formal offer.

On September 12, 2001, petitioner filed its formal offer of evidence consisting of the following:

1. Duplicate Original of Authority to Accept Payment (ATAP) No. 4099085 dated January 7, 1997 issued to Taxpayer Ayala General Insurance Corporation (*Exh. O*);
2. Certified Xerox Copy of the Certification dated January 4, 2000 issued by the Chief Revenue Accounting Division of the Bureau of Internal Revenue (*Exh. P*);
3. Original of Transmittal letter dated August 30, 2001 (*Exh. P-1*) and
4. Duplicate Original of the Letter-Request dated August 28, 2001 *(Exh. P-2)*.

On May 20, 2002, this Court considered the case submitted for decision sans memorandum for the respondent.

The sole issue for this court's consideration is whether or not petitioner's claim for refund of P750,000.00 representing erroneous payment of Documentary Stamp Tax (DST) is supported by substantial evidence.

We find for the petitioner.

After a careful evaluation of the evidence presented, this court is convinced that petitioner is entitled to the refund of P750,000.00. Petitioner was able to prove its claim by clear and substantial evidence. As stated in this court's decision dated June 7, 2000, petitioner was able to establish that it paid on July 9, 1997 the amount of P750,000.00 for the 7,500,000 shares of stocks it issued to its stockholders through the DST Metering machine of ALI (*CTA Records, p.116*). On the other hand, in the new trial accorded the petitioner, it presented the copy of the Authority to Accept Payment (ATAP) showing on its face the machine validation of the amount paid and the date of payment which is January 8, 1997 (*Exh. O*).

The foregoing facts were also corroboratively proven by the certification issued by the Chief of the Revenue Accounting Division of the Bureau of Internal Revenue *(Exh. P)*. The said certification is hereunder reproduced, thus:

Quezon City

January 4, 2000

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

This is to certify that the collection listed hereunder was verified against the Tax Returns/ATAPs Batch Control Sheet on file with this Division as to Taxpayer's Name, BCS No., Date of Payment, Bank Code and Amount and verified remitted per

CRDC and Central Bank Credit Advise. The kind of tax paid is not indicated in the source documents.

Name of Taxpayer: **AYALA GENERAL INSURANCE CORP**.

BCS NO.	**DATE**	**BANK CODE**	**AMOUNT**	**LIST OF 12.58 VERIFIED**
97-00006	01-08-97	010-063	P750,000.00	01/97-05/97
xxxxxxxx	xxxxxxxxxx	xxxxxxxx	xxxxxxxxxx	xxxxxxxxxxxx

This is to further certify that the collections listed above representing payment of taxes were not included in the schedules of dishonored checks on file with this Division.

Kindly furnish us clear photocopy of validated return for the other tax payment covered by the request for verification.

This certification is issued upon request of Mr. Edmundo A. Vasquez, Revenue District Officer, RDO #50 (South), Makati City .

(Sgd.)CARMELITA SJ. PASCUAL
Chief, Revenue Accounting Division

Sources: Tax Returns/ATAPs Batch Control Sheet
CRDC/CBCA/List of Dishonored Checks

In short, petitioner has now proven its first payment by submitting to the Court the copy of the Authority to Accept Payment as well as the copy of the certification from the Revenue Accounting Division of the Bureau of Internal Revenue.

With regard to the compliance with the two-year reglementary period prescribed under Section 229 of the Tax Code, We find that both the administrative and the judicial claims for refund were filed within the prescribed period. The second payment which turned out to be erroneous was made on July 9, 1997. The computation of the two–year period, therefore, is until July 9, 1999. Thus, when petitioner filed both its claim for refund with the Bureau of Internal Revenue and the petition for Review with this court on July 9, 1999, the same were well within the two-year prescriptive period.

WHEREFORE, in the light of the foregoing, the court finds the instant Petition for Review meritorious. Accordingly, respondent is hereby **ORDERED to REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P750,000.00, representing erroneously paid documentary stamp tax paid by petitioner on July 9, 1997.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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