REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DMCI HOLDINGS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5573

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 05 1999

x - x

DECISION

This is a judicial claim for refund filed by the Petitioner in the amount of ₱383,435.00 allegedly representing overpaid documentary stamp taxes.

Petitioner is a domestic corporation with office address at 4th Flr., DACON Building, 2281 Pasong Tamo Extension, Makati City, Metro Manila.

The facts are simple.

On December 13, 1995, Petitioner, through the services of its stock and transfer agent, Rizal Commercial Banking Corporation ("RCBC" for short), paid the amount of ₱3,838,350.00 as documentary stamp taxes on the primary issuance, by way of initial public offering, of its 383,434,000 shares, computed at the rate of ₱2.00 for every ₱200.00, or fractional part thereof, of the total par value of the shares issued, as provided under Section 175 of the Tax Code, as amended.

On January 5, 1996, however, RCBC filed with Respondent's Bureau a claim for refund of the amount of ₱383,435.00 allegedly representing overpaid documentary taxes over the transacted shares. It contended that out of the 383,434,000 shares sold, only 306,747,000 were primary or new shares while the rest of the 76,687,000 shares were secondary issues which erroneously were paid ₱2.00 instead of ₱1.00 documentary stamp tax (Exhibit "F").

On January 7, 1998, Petitioner elevated its case before this Court apparently in order to comply with the filing of judicial claim within a period of two years, as prescribed in Section 230 of the Tax Code, as amended.

At bar, Petitioner reiterates its stance a quo. On the other hand, Respondent contends, inter alia, that it is incumbent upon Petitioner to prove that it has complied with the provisions of Section 230 of the Tax Code, as amended.

Trial proceedings mainly involved the presentation and formal offer of evidence on the part of the Petitioner while Respondent was deemed to have waived his right to present evidence (CTA Resolution, dated October 16, 1998; Docket, p. 312).

The issues confronting this Court are the following, to wit:

> (1) whether or not the instant Petition for Review has been filed within two years from date of payment of the tax, as required in Section 230 of the Tax Code, as amended; and if in the affirmative,

415

(2) whether or not Petitioner has proven the factual and legal aspects of its claim for refund.

As regards the first issue, this Court peremptorily rules against herein claim for refund on the ground that it has clearly prescribed. Section 230 of the 1995 Tax Code, as amended, pertinently provides in part, to wit:

> ***SEC. 230. Recovery of tax erroneously or illegally collected.*** - x x x
>
> In any case, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied)

Based on the above provision of law, it is self-evident that more than two years have elapsed when the filing of the instant Petition on January 7, 1998 is reckoned from the date of payment of the tax on December 13, 1995 (Exhibit "E"). The two-year period in the case at bar ended on December 12, 1997 (the year 1996 being a leap year). Because of this jurisdictional flaw, this Court is proscribed by said provision of law from entertaining the Petition at bar.

With this finding of the Court, a discussion of the remaining issue is no longer allowed as it is already barred by prescription.

416

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** on the ground of **PRESCRIPTION**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

417