REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5324

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 02 1998

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D E C I S I O N

The issue which is presented for our consideration is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of ₱3,058,400.09 allegedly representing its overpaid capital gains tax on stock transactions for the year 1993.

As represented, petitioner is a domestic corporation which is principally engaged in the mining business. On February 9, 1993, it sold its 1,623,949,566 shares of stocks in Itogon-Suyoc Mines, Inc. in favor of several individuals (see Exh. "B"), for a total consideration of ₱25,000,000.00. As a result of the said transaction, petitioner alleges that it incurred a net capital loss amounting to ₱15,292,000.45, as the acquisition cost of said shares amounted to ₱40,292,000.45. The Capital Gains Tax Return on Stock Transactions covering said petitioner's sale of its shares of stock of Itogon-Suyoc Mines, Inc., was filed with the respondent's Bureau on March 10, 1993.

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On December 29, 1993, petitioner likewise sold its 425,000 shares of stocks in Monte de Piedad and Savings Bank in favor of the latter's shareholders and other investors (see Exh. "D") for a total consideration of ₱75,000,000.00. From said transaction, a net capital gain in the amount of ₱30,484,718.45 was realized by the petitioner, as the acquisition cost of said shares amounted to only ₱44,515,281.55. This was reflected in the Capital Gains Tax Return on Stock Transaction which petitioner filed with the respondent's Bureau on January 28, 1994 (Exh. "C"), which also showed the payment of the Capital Gains Tax on the said transaction in the amount of ₱6,086,943.69.

On February 1, 1994, petitioner filed with the respondent's Bureau a Final Consolidated Tax Return on Stock Transactions (Exh. "E") for the taxable year 1993. In said return, petitioner reported a net capital gain of ₱15,192,718.00 and a refundable capital gains tax amounting to ₱3,058,400.09, computed as follows:

Corporate Stock	Date of *Sale*	Selling Price	Net Capital Gain (Loss)	Capital Gains Tax Paid
Itogon-Suyoc Mines	2/29/93	₱25,000,000.00	(₱15,292,000.45)	---
Monte de Piedad	12/29/93	75,000,000.00	30,484,718.00	₱ 6,086,943.69
TOTAL			₱15,192,718.00	₱ 6,086,943.69

Net Capital Gains		₱15,192,718.00
Total Capital Gains Tax		
Due (Not over ₱100,000 - 10%)	₱ 10,000.00	
(Over ₱100,000 - 20%)	₱3,018,543.60	₱ 3,028,543.60
Less: Payments made (on Jan. 28, 1994)		6,086,943.69
Tax Due (Refundable)		(₱ 3,058,400.09)

On January 17, 1996, petitioner filed with the respondent's Bureau a written claim for refund or tax credit of the aforesaid amount of ₱3,058,400.09 (Exh. "F"), invoking Sec. 33 of the Tax Code and Sections 6(c)(2) and 7(b)(2) of Revenue Regulations No. 2-82, as legal bases of its claim, which provides:

> **National Internal Revenue Code**
>
> **"SEC. 33.** ***Capital Gains and Losses.*** - *(a) Definitions.* - x x x.
>
> (1) x x x
>
> (2) x x x
>
> (3) *Net Capital Loss.* - The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges.
>
> (c) *Limitation on capital losses.* - Losses from sales or exchange of capital assets shall be allowed only to the extent of the gains from such sales or exchanges. x x x."
>
> **Revenue Regulations No. 2-82**
>
> **"SEC. 6(c)(2).** - The net capital losses sustained during the taxable year shall be allowed as a capital loss deductible in the same taxable year only."
>
> **"SEC. 7(b)(2)** x x x. The tax shown on the final or adjustment return after deducting therefrom the taxes paid during the taxable year shall be paid upon filing or refunded as the case may be."

Thus, petitioner reasoned out that inasmuch as the capital gains tax it paid on the sale of its Monte de Piedad shares was more than the total capital gains tax due from it upon consolidation at the end of 1993, it is entitled to a refund or tax credit of the resultant overpayment or excess payment amounting to ₱3,058,400.09.

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The aforesaid claim was not acted upon by the respondent, hence, on January 26, 1996, petitioner filed with this Court the instant petition for review.

Respondent on the other hand, in her Answer, viewing the claim for refund with indifference and skepticism, interposed that the instant claim for refund is under verification and the usual token of defenses that (1) the burden of proof rests upon petitioner to show that the taxes were paid erroneously or collected illegally; (2) claims for refund are construed strictly against the claimants since they are in the nature of an exemption from taxation; and (3) taxes are presumed to have been paid and collected in accordance with law.

As earlier adverted to at the outset, the issue which is presented for our consideration is whether or not petitioner is entitled to the refund or tax credit of the amount of ₱3,058,400.09, allegedly representing its overpaid capital gains tax on stock transactions for the year 1993.

It has been shown in the case at bar that (1) the petitioner has complied with the statutory requirement mentioned in Sections 204 and 230 of the Tax Code by having filed a written claim for refund within the two-year period from date of payment of the tax; (2) the respondent has not disputed the correctness of the Capital Gains Tax Returns and the payment of the petitioner of its capital gains tax on stock transactions for 1993 amounting to ₱6,086,943.69; and (3) respondent

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manifested to the Court several times that the whole amount of petitioner's claim for refund or tax credit was favorably recommended by the investigating examiner (see TSN, dated November 18, 1996, December 5, 1996 and January 20, 1997). Be that as it may, the case was submitted for decision by respondent on the basis of the pleadings and records and by petitioner on the evidence presented by counsel *sans* their respective memorandum.

An examination of the records of this case satisfies the Court that the case presents no dispute as to the material facts. The events accompanying the case adequately justify petitioner's righteous indignation to a more expeditious action. Respondent has offered no argument nor made any effort to adduce any controverting evidence to refute the legitimacy of petitioner's claim for refund. The revenue examiner who investigated the instant case has recommended the refund of the petitioner's claim (see p. 92 of the BIR records). It may not be an oversimplification to state that said findings furnish the best means of its own exposition and as such deserves the credence that should normally be accorded. Thus, it is not a redundancy to state once more what this Court held and what so plainly apply to the case at bar, that:

> "The administrative machinery of the respondent employed in the processing of the claim for refund seems to move barely at idling speed. To be relatively quiescent for some four (4) years on a claim of such a simple

> nature which no longer incites controversy nor excites a queasy sense of expectation, creates an unwarranted bureaucratic inertia of inaction. (**Royal Undergarment Corporation of the Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5013, July 24, 1997.**)"

IN THE LIGHT OF ALL THE FOREGOING, we are persuaded to extend the relief sought by the petitioner. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein petitioner, the amount of ₱3,058,400.09, without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
(Dissenting Opinion)

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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DISSENTING OPINION

With due respect to the opinion of the majority, I beg to disagree with the decision in the above-entitled case granting petitioner's claim for refund in the total amount of P3,058,400.09.

The refundable amount of P3,058,400.09 stems from petitioner's alleged net capital loss of P15,292,000.45 arising from petitioner's sale of its shares of stock in Itogon-Suyoc Mines, Inc. (see Exhibit "A"), which was in turn offsetted against its net gain of P30,484,718.45 from its sale of shares of stock in Monte de Piedad and Savings Bank. This resulted to a total net capital gain for the taxable year 1993 in the amount of 15,192,718.00 which was taxed and paid for in the sum of P3,028,543.60, computed as follows:

Net Capital Gain		P15,192,718.00
Total Capital Gains Tax		
Due Not over P100,000	(10%)	10.000.00
Over P100,000	(20%)	3,018,543.60
		P 3,028,543.60

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Since petitioner previously paid the capital gains tax of P6,086,943.69 for the net gain it acquired from its sale of shares of stocks in Monte de Piedad Bank, it is now asking for the refund of P3,058,400.09 as overpaid capital gains tax for the taxable year 1993.

I believe that the net capital loss of P15,292,000.45 (arising from petitioner's sale of shares of stock in Itogon-Suyoc) should not have been offsetted against the net capital gain arising from the sale of the Monte de Piedad shares because the shares in Itogon-Suyoc do not belong in the same category as the shares of Monte de Piedad for the simple reason that unlike the latter shares in Monte de Piedad, petitioner's shares of stock in Itogon-Suyoc are listed in the Philippine Stock Exchange, thus it should have been taxed at the rate of 1/4 of 1% pursuant to Section 24 (a) (2) (B) of the Tax Code, quoted hereunder as follows:

> 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:
>
> x x x x x x
>
> 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. (Underscoring supplied)

What petitioner did in the instant case is to place the shares of Itogon-Suyoc Mines in the same class as its

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shares in Monte de Piedad, making it convenient to offset whatever loss it incurred in the sale of shares of Itogon-Suyoc with the gain it obtained from the sale of the shares of Monte de Piedad.

On its face, nothing seems to be wrong with this arrangement but upon close analysis one can clearly see that this ploy allows the petitioner to avoid paying the capital gains tax of 1/4 of 1% of the gross selling price of the Itogon-Suyoc shares and as an added bonus allows it to offset whatever loss it incurred in the sale of said shares with the gain realized from the sale of the other unlisted shares like its shares of stock in Monte de Piedad, resulting in a lower tax rate or as shown in the instant case, an overpayment of taxes. To allow the petitioner to treat listed shares of stock in the same manner as unlisted shares of stock, the sale of which is taxable at 10% to 20%, would be to condone a tax avoidance scheme employed by taxpayers as clearly depicted in the present case.

The petitioner cannot be allowed to escape the taxable consequence of selling its listed shares, by the simple expedient of selling the same outside of the Philippine Stock Exchange. To my mind, once the shares of stocks are listed with the Philippine Stock Exchange, any sale of said stocks whether it be through the said stock exchange or outside of it, subjects the sale to the

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tax rate of 1/4 of 1%, and any loss incurred by reason thereof should not be offsetted against the net capital gain realized from shares not traded through the stock exchange precisely because they are entirely different from each other.

It is of public knowledge that the shares of Itogon-Suyoc Mines, Inc. are listed with the Philippine Stock Exchange, and this Court, in its discretion, may take judicial notice of this fact in accordance with Section 2 of Rule 129 of the Rules of Court which provides, as follows:

> **Section 2. -Judicial notice, when discretionary**. A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Working on the premise that no offsetting should be allowed, then there can be no overpayment of capital gains tax for the taxable year 1993 contrary to the claim of the petitioner. In fact, petitioner should be made liable for the payment of capital gains tax on its sale of the shares of Itogon-Suyoc Mines pursuant to the aforecited Section 24 (a) (2) (B) of the Tax Code because as the evidence showed, it did not pay the same.

WHEREFORE, in view of the foregoing, I register my dissent to the majority opinion and hereby recommend the

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DENIAL of petitioner's claim for refund of capital gains tax for the taxable year 1993.

AMANCIO Q. SAGA
Associate Judge