REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5738

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 01 2000

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DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on March 5, 1999, seeking for a refund of the amount of P17,815,615.96, representing alleged excess capital gains tax paid by it during the taxable year ended December 31, 1997.

The pertinent facts of this case as culled from the records are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is engaged, among others, in the business of distribution of building and industrial materials, middle income housing and agri-business.

Records shows that Petitioner owned, either directly in its own name or indirectly as beneficial owner, shares of stock in some other corporations also organized and existing under the laws of the Republic of the Philippines such as Cargoswift, Inc., Aerotel Ltd. Corp., UIS Transport Co. Inc., Jardine Davies Transport Services, Inc., Jardine CMG Life Insurance, Inc., and Hardie Jardine, Inc. Petitioner alleged that none of its shares of stocks in the aforementioned companies are listed and traded in the Philippine Stock Exchange.

On March 5, 1997, Petitioner sold its one thousand five hundred (1,500) shares in Cargoswift for a total consideration of Forty One Thousand (P41,000.00) Pesos, as evidenced by a Deed of Sale dated March 5, 1997, executed by Petitioner in favor of Jardine Matheson (Europe) B.V. The said stock transaction resulted in a capital loss.

On even date, Petitioner sold to Jardine Matherson its seven thousand (7,000) shares in Aerotel Limited Corporation for a total consideration of Seven Hundred Five Thousand (P705,000) Pesos, its eighteen thousand (18,000) shares in UTS Transport Co., Inc. for One Million Eight Hundred Sixty Nine Thousand (P1,869,000.00) Pesos and its one hundred fifty-five thousand (155,000) shares in Jardine Davies Transport services, Inc. for a total consideration of Two Million Thirteen Thousand (P2,213,000.00) Pesos. Except for the shares in UTS Transport, all the aforesaid transactions resulted in capital losses.

On March 7, 1997, Petitioner sold its one hundred thousand (100,000) shares in Jardine CMG Life Insurance, Inc. to CMG Asia Pty. Ltd., for the amount of Fourteen Million Nine Hundred Ninety Five Thousand Dollars (US$14,995,000) or for a total consideration of Three Hundred Ninety Four Million Six Hundred Eighty Three Thousand Three Hundred Ninety Five (P394,683,395.00) Pesos at the rate of US $1:P26.321, the BSP Reference Rate prevailing on March 7, 1997. This time the transaction resulted in a capital gain of P391,548,137.00.

On December 10, 1997, Petitioner sold to RCI Pty. Ltd. its five hundred seventy thousand (570,000) preferred shares and forty six thousand six hundred sixty-seven

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(46,667) common shares in Hardie Jardine, Inc. for a total consideration of Two Hundred Twenty Five Million Seventy Six Thousand Four Hundred Seventeen (P225,076,417.00) Pesos. Again, the transaction resulted in a capital loss.

On various occasions, Petitioner filed with the Respondent Bureau of Internal Revenue, separate Capital Gains Tax Returns for each stock transaction consummated by Petitioner in taxable year 1997 and paid the capital gains taxes due or assessed thereon, if any as follows:

Date of Filing of Capital Gains Tax Return	Name of Corporate Stock Sold
March 5, 1997	Cargoswift, Inc.
March 5, 1997	Aerotel Ltd., Corp.
March 5, 1997	UTS Transport Co., Inc.
April 3, 1997	Jardine Davies Transport Services, Inc.
April 3, 1997	Jardine CMG Life Insurance, Inc.
January 7, 1998	Hardie Jardine, Inc.

On February 17, 1998, Petitioner filed with the BIR a final consolidated return in which Petitioner reported all of its stock transactions during the taxable year 1997 and which indicated an overpayment by Petitioner of capital gains tax on its capital gains derived during the said taxable year from its sale or exchange of shares of stock not traded through local stock exchange in the amount of P17,815,615.96 computed as follows:

Final Consolidated Return

Selling Price of Current Transaction	P624,387,812.00
Cost and Other Selling Expenses	316,348,493.00
Net Gain (Loss)	308,039,319.00
Add: Prior Capital Gains/(Loss) During the Year	
Total Taxable Capital Gains/(Loss)	308,039,319.00
Total Capital Gains Tax	61,597,863.80
Less: Prior Tax Paid per Return Filed During the Year	(79,413,479.76)

Total Amount Payable/(Refundable) **P(17,815,615.96)**

(see Exhibit "H")

The controversy arose when the Respondent did not issue a Certification/Tax Clearance to allow the registration by the corporate secretary of Jardine CMG Life Insurance, Inc. of the transfer of the shares in the name of the buyer thereof. Respondent refused to issue the said Certification/Tax Clearance alleging that Petitioner may not deduct from the capital gain it derived from the sale of its shares of stock in Jardine CMG Life Insurance Co. Inc. the capital losses it sustained during the taxable year when it sold its shares of stock in Cargoswift, Inc., Aerotel Ltd. Corp. and Jardine Davies Transport Services, Inc.

As a consequence of the said disallowance, Respondent demanded payment by Petitioner of the amount of P3,790,607.00 as deficiency capital gains tax, 25% surcharge in the amount of P947,651.75, interest in the amount of P141,200.11 and compromise penalty in the amount of P25,000.00, or a total deficiency capital gains tax in the amount of P4,904,458.86.

Petitioner, under pressure from the buyer of the shares, paid the aforesaid deficiency capital gains tax under protest. However, to resolve the issue on whether or not it may deduct from the capital gain it derived from the sale of its shares of stocks in Jardine CMG Life Insurance Co. Inc. the capital losses it sustained earlier during the taxable year, Petitioner filed with the Respondent a request for a ruling on the matter.

On April 13, 1998, Respondent issued BIR-Ruling No. 37-98 affirming the position of the Petitioner that capital losses sustained during the taxable year from sales or exchange of shares of stock classified as capital assets may be deducted currently (as opposed to year-end) from capital gains derived during the same taxable year from sales or during the same taxable year from sales or exchanges of stocks classified as capital assets.

In view of the aforesaid ruling, Petitioner filed with the Respondent on March 3, 1999 a formal claim for refund of the amount of P17,815,615.96 representing alleged excess capital gains tax paid by it for taxable year 1999.

Unable to obtain an affirmative response from the Respondent, Petitioner elevated its grievance to this Court on March 5, 1999 to toll the running of the prescriptive period provided under Section 230 of the Tax Code.

In an Answer filed on May 19, 1999, Respondent interposed the following Special and Affirmative Defenses to wit:

> "5. Petitioner's claim for refund if at all is still under verification/investigation by Respondent Commissioner of Internal Revenue;
>
> 6. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
>
> 7. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (**Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351**);
>
> 8. Taxes are presumed to have been paid and collected in accordance with law."

In a resolution promulgated May 23, 2000, this case has been considered submitted for decision sans the memorandum of the Respondent.

As stipulated by the parties, the issue to be resolved in this case are as follows:

1) Whether or not capital losses sustained during the taxable year from sales or exchange of shares of stock classified as capital assets may be deducted currently (as opposed to year-end) from capital gains derived during the same taxable year from sales or exchange of shares of stock classified as capital assets.

2) Whether or not the BIR's refusal to allow Petitioner to offset the aforesaid capital losses from stock transaction (not consummated through the Philippine Stock Exchange) during the taxable year 1997 is proper.

3) Whether or not the resulting deficiency capital gains tax on account of the BIR's refusal to allow offset is likewise proper.

4) Whether or not Petitioner paid to the BIR the capital gains tax due on the stock transactions consummated by Petitioner during taxable year 1997.

Anent the first issue, this Court believes that the opinion of the Respondent in BIR Ruling No. 37-98 dated April 13, 1998 (Exhibit "I") is correct, and We quote, thus:

"JARDINE DAVIES INC.
Jardine Davies Bldg.
22 Sen. Gil Puyat Avenue
1220 Makati City

Attention: Atty. T. Dumpit

Gentlemen:

This refers to your letter dated May 21, 1997 requesting for a ruling that capital losses sustained during the taxable year from sales or exchanges of shares of stock classified as capital assets may be deducted currently (as opposed to year-end) from capital gains derived during the same taxable year from sales or exchanges of shares of stock classified as capital assets.

It is represented that Jardine Davies Inc. (JDI), a domestic corporation, sold earlier last year some shares of stock classified as capital assets and sustained capital losses as a result of the sale; that during the taxable year, JDI sold again some shares of stock classified as capital assets and derived capital gains as a result of the sale; that JDI now wishes to deduct the capital losses earlier sustained during the taxable year from the capital gains earned during the same taxable year and pay the tax imposed in then Section 24(e)(2) of the Tax Code, as amended, on net capital gains derived from the sale or exchange of shares of stock in a domestic corporation not traded through a local stock exchange.

In reply, please be informed that under then Section 24(e)(2) of the Tax Code, as amended (now Section 27(D)(2) of the Tax Code of 1997), reading:

> "(e) Tax on certain incomes derived by domestic corporations. – x x x.
>
> "(2) *Capital gains from sales of shares of stock.* – Capital gains realized from the sale, exchange or disposition of shares of stock 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	10%
Over P100,000	20%

The term "net capital gain" and "net capital loss" are defined under Secs. 33(a)(2) and (3) of the Tax Code, as amended [now Secs. 39(A)(2) & (3) of the Tax Code of 1997], as follows:

> "(2) Net capital gain. – The term 'net capital gain' means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.
>
> "(3) Net capital loss. – The 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over gains from such sales or exchanges."

It is clear from the statute that what is being taxed is only the "net capital gains" realized from the sale or exchange or other disposition of shares of stock not traded through a local stock exchange. If the legislature had intended to impose the tax on "capital gains", it would not have added the word "net" before "capital gains" in then Section 24(e)(2) of the Tax Code, as amended.

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On the above bases, this Office is of the opinion that capital losses sustained during the taxable year 1997 from sales or exchanges of shares of stock classified as capital assets may be deducted from and to the extent of the capital gains derived during the same taxable year from sales or exchanges of shares of stock classified as capital assets.

x x x x x x x x x

Very truly yours,

LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue"

Conformably, Petitioner's capital losses sustained during the taxable year from sales of shares of stock may be deducted currently from its capital gains derived during the same taxable year. As a consequence thereof, We hold that Petitioner erred in disallowing Petitioner's offsetting of its capital losses incurred from its sales of shares of stock and in subjecting Petitioner to deficiency capital gains tax.

After having settled the legal issues, We now proceed to Petitioner's compliance with the rule on substantiation.

A thorough scrutiny of relevant documents submitted to this Court reveals that Petitioner was able to substantiate its claim for refund. Petitioner's payments of capital gains taxes were substantiated by Petitioner's capital gains tax returns (Exhs. C and E) and the Authority to Accept Payment (Exhs. L and M) reflecting the amounts of P18,627,255.10, P55,881,765.30 and P4,904,458.86, paid on April 3, 1997, April 7, 1997 and May 28, 1997, respectively. The payment made on March 5, 1997 amounting to

P6,900.00 has been applied to Petitioner's capital gains tax liability on the sale of its shares of stock in Jardine CMG Life Insurance, Inc. (Exh. C). All of the aforesaid documents were machine validated and stamped by the receiving bank, hence, considered valid payments since banks are the collecting agents of the Respondent Bureau. Thus, after taking into account the deductions of capital losses incurred by the Petitioner from its capital gains in taxable year 1997, this Court is of the conclusion that the Petitioner is entitled to the relief sought for, computed as follows:

Selling Price of Stock Transactions						
a) Cargoswift, Inc.			P	41,000.00		
b) Aerotel Ltd., Corp.				705,000.00		
c) UTS Transport Co., Inc.				1,869,000.00		
d) Jardine Davies Transport Services, Inc.				2,013,000.00		
e) Jardine CMG Life Insurance, Inc.				394,683,395.00		
f) Hardie Jardine, Inc.				225,076,417.00	P	624,387,812.00
Cost and Other Selling Expenses						
a) Cargoswift, Inc.			P	150,000.00		
b) Aerotel Ltd., Corp.				840,000.00		
c) UTS Transport Co., Inc.				1,800,000.00		
d) Jardine Davies Transport Services, Inc.				20,756,535.00		
e) Jardine CMG Life Insurance, Inc.				3,135,258.00		
f) Hardie Jardine, Inc.				289,666,700.00		316,348,493.00
Net Gain /(Loss)					P	308,039,319.00
Add: Prior Capital Gains/(Loss) During the Year						-
Total Taxable Capital Gains/(Loss)					P	308,039,319.00
Total Capital Gains Tax						
P100,000.00 x 10%			P	10,000.00		
P307,939,319.00 x 20%				61,587,863.80	P	61,597,863.80
Less: Prior Tax Paid Per Return Filed During the Year						
	Exhibit	Date Paid		Amount		
	E	April 03, 1997	P	18,627,255.10		
	L	April 07, 1997		55,881,765.30		
	M	May 28, 1997		4,904,458.86		(79,413,479.26)
Total Amount Refundable					P	(17,815,615.46)

WHEREFORE, in view of all the foregoing Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE TAX CREDIT CERTIFICATES** for the amount of P17,815,615.46, in favor of the Petitioner representing excess capital gains tax paid for taxable year 1997.

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