REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BOGO-MEDELLIN MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4014

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This case involves a claim for refund of overpaid capital gains tax in the amount of P161,586.28 for the fiscal year ended September 30, 1984.

Petitioner is a domestic corporation organized and existing under Philippine laws.

On January 15, 1985, petitioner filed its final adjusted Stock Transaction Capital Gains Tax Return for its fiscal year ended September 30, 1984. The said return which covered all of petitioner's stock transactions during said taxable year reflected a net capital gains of P2,301,280.67 indicated as follows:

Name of Company	No. of Shares	Unit Selling Price	Total Selling Price	Cost (Incl. Expenses of Sales)	Gain
Allied Guarantee Insurance Co., Inc.	14,062	247.90	3,485,969.80	376,757.75	3,109,212.05
Marinduque Mining & Industrial Corporation	132,500	6.00	795,000.00	1,222,461.25	(427,461.25)
Atlas Consolidated Mining	98,700	various	2,353,086.43	1,892,646.56	460,439.87
Far East Wire & Cable Corporation	84,091	NIL	NIL	840,910.00	(840,910.00)
			6,634,056.23	4,332,775.56	2,301,280.67

On the said capital gain of P2,301,280.67, petitioner computed a tax due of P450,256.13, thus:

On the first P100,000.00, 10%	P 10,000.00
On the excess of P100,000,00, 20% (P2,201,280.67 x 20%)	440,256.13
TOTAL	P450,256.13

During the same taxable year, however, petitioner made a tax payment of P611,842.41 (Confirmation Receipt Order No. 2567714 and Payment Order No. 2021386, both dated January 4, 1984) on its net capital gain of P3,109,212.05 upon the sale of its shares of stock in Allied Guarantee

Insurance Co., Inc. The said net capital gain of P3,109,212.05 was reported in its final adjusted Stock Transaction Capital Gains Tax Return. (pp. 124-125, BIR rec.)

As a result, the sum of P161,586,28 is allegedly refundable to petitioner inasmuch as its total tax liability amounted to only P450,256.13, whereas its total payment amounted to P611,842.41 which is computed as follows:

Tax Paid	P611,842.41
Less: Tax Due	450,256.13
Refundable Amount	P161,586.28

(Exh. A, p. 132 BIR rec.)

On February 22, 1984, petitioner filed a claim for refund of overpaid capital gains tax in the amount of P161,586.28 (Annex A, Petition for Review; admitted in respondent's Memorandum).

Respondent has not yet granted petitioner's claim for refund, hence a petition for review was filed on December 27, 1985 to stop the running of the 2 year prescriptive period to judicially claim the said refund.

Meantime, an investigation was conducted by respondent's Revenue District Office No. 32-A pursuant to an Indorsement by the Appellate Division. As a result of said investigation, it was found out by Examiner Fernando Canizares that the amount of P161,586.28 was an overpayment of capital gains tax refundable to petitioner. (Exhibit A, pp. 131-134 BIR rec.) Said Examiner Fernando Canizares in his report said:

> "In view of the foregoing and it appearing that the claim was seasonably filed, it is respectfully recommended that the amount of P161,586.28 be refunded to BOGO-MEDELLIN MILLING CO., INC." (Exhibit "A-1"p. 131, BIR Records).

This finding of Examiner Canizares was never controverted by respondent, inasmuch as he submitted his case on the basis of the pleadings and BIR record.

The only issue brought before this court is whether or not petitioner is entitled to a refund/tax credit of the amount of P161,586.28 as overpaid capital gains tax for its fiscal year ended September 30, 1984.

Petitioner contends that it is entitled to the refund/or tax credit the amount of P161,586.28 representing overpaid capital gains tax for its fiscal year ended September 30, 1984.

On the other hand, respondent contends that petitioner's alleged overpaid capital gains tax for the year in question hinges on petitioner's having written off a loss of its shares of stock in the Far East Wire and Cable Corporation in the amount of P840,091.00 representing the value of its 840,091 shares of stocks with aforesaid Corporation which has become worthless by reason of the alleged dissolution of said corporation.

We agree with petitioner that it is entitled to the refund of P161,586.28 representing its overpaid capital gains tax for its fiscal year ended September 30, 1984. Examiner Canizares in his report found petitioner entitled to the refund of the said overpaid capital gains tax (Exhibits A & A-1, pp. 131-134, BIR rec.); and the same respondent having submitted his case based upon the pleadings and the BIR record, practically admitted the veracity and truth of what is found in said BIR records.

The claim of respondent that the refund hinges on in the writing off the shares of stock in the Far East Wire and Cable Corporation in the amount of P840,091.00 is unavailing inasmuch as Examiner

Canizares said that the P840,091.00 shares of stock became worthless by reason of the dissolution of said corporation and that the writing off of the amount of P840,091.00 was in accordance with Section 30 (e) (3) of the tax code. We quote Examiner Canizares:

> "During the same taxable year, the taxpayer wrote-off the total amount of P840,091.00 representing the value of 84,091 shares of stock of Far East Wire & Cable Corporation which became worhtless by reason of the dissolution of said corporation. Said write-off was in accordance with Section 30(e)(3) of the Tax Code which states:
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> > "(3) Securities Becoming Worthless. - If any securities as defined in Section 20 are ascertained to be worthless and charge off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than above or trust company incorporated under the laws of the Philippines a substantial part of whole business is the recipient of deposit, for the purpose of this Titles be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets." (Emphasis ours; Exhibit A)

Respondent's contention that the recommendation of his examiner (referring to

Canizares) is not binding to him is therefore without merit.

In the tax return, it has shown losses of shares of stock in the Far East Wire and Cable Corporation in the amount of P840,091.00 representing the value of its 840,091 shares of stock with aforesaid corporation which has become worthless by reason of the alleged dissolution of said corporation. Respondent, however, has not issued any deficiency assessment nor seriously disputed the correctness thereof. **(Dataprep [Phil.], Inc., vs. Commissioner of Internal Revenue,** CTA Case No. 3600, March 30, 1984.) Neither has he submitted particular controverting evidence except that this case was submitted based on the pleadings and the BIR records. Respondent, therefore, may be considered to have no serious objection or opposition to petitioner's entitlement to the refund.

> "xxx The record makes it clear that petitioner's income tax return for the taxable year in question has shown losses. Respondent has not issued any deficiency assessment nor disputed the correctness thereof. **(Dataprep [Phils.], Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 3600, March 30, 1984.)

"No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was presented by respondent and this case having been submitted for decision on the pleadings and on the face of the unrebutted evidence of petition showing that it is entitled to refund xxx, respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. The circumstances obtaining xxx compels us therefore to sustain the xxx the petitioner's right to the refund xxx based on the evidence and pleadings." (**Ateneo de Manila University vs. Commissioner of Internal Revenue,** CTA Case No. 3213, July 28, 1989)

WHEREFORE, petitioner Bogo-Medellin Milling Co., Inc. is entitled to the refund/or tax credit in the amount of P161,586.28 representing overpaid capital gains tax for the fiscal year ended September 30, 1984.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

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

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, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals