REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEONORA F. PASCUAL,
Petitioner,

- versus -

C.T.A. CASE NO. 6224

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 16 2002

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DECISION

This is a judicial claim for refund or issuance of a tax credit certificate in the amount of P95,884.36 arising from the alleged overpayment of Capital Gains Tax and Documentary Stamp Tax relative to the transfer of petitioner's shares of stock.

Petitioner is of legal age, widow, Filipino and a stockholder of Pascual Laboratories, Inc. ("PLI," for brevity), a corporation organized and existing under the laws of the Philippines with principal office at 817 EDSA, South Triangle, Quezon City.

By virtue of five (5) separate Deeds of Assignment which were signed on January 20, 1999 and notarized on January 21, 1999, petitioner assigned, transferred and conveyed all her rights, interests and ownership over her 133,577 shares of stock in PLI in favor of L & I Development Corporation ("L & I," for brevity) for an aggregate consideration of P23,342,580.75, broken down as follows:

Exhibit	No. of Shares	Stock Certificate Number	Par Value (P100/share)	Selling Price
R & R-2	4,599	197	P 459,900.00	P 803,675.25
S & S-2	32,243	175, 195, 201, 238	3,224,300.00	5,634,464.25
T & T-2	32,246	172, 192, 199, 236	3,224,600.00	5,634,988.50
U & U-2	32,244	174, 194, 200, 237	3,224,400.00	5,634,639.00
V & V-2	32,245	173, 193, 198, 235	3,224,500.00	5,634,813.75
Total:	133,577		P 13,357,700.00	P 23,342,580.75

Prior to the execution of the aforesaid Deeds of Assignment or on January 15, 1999, petitioner paid the Capital Gains Tax (CGT) pertaining to the transfer of her shares of stock in PLI to L & I in the total amount of P988,488.08, which was computed based on the straight application of the rate of 10% on the net capital gain, as shown below:

Exhibits	No. of Shares	Selling Price	Acquisition Cost	Net Capital Gain	CGT Paid
W & BB	4,599	P 803,675.25	P 459,900.00	P 343,775.25	P 34,377.52
X & CC	32,243	5,634,464.25	3,224,300.00	2,410,164.25	241,016.43
Y & DD	32,246	5,634,988.50	3,224,600.00	2,410,388.50	241,038.85
Z & EE	32,244	5,634,639.00	3,224,400.00	2,410,239.00	241,023.90
AA & FF	32,245	5,634,813.75	3,224,500.00	2,410,313.75	241,031.38
					P 998,488.08

Likewise, on even date, petitioner paid the corresponding Documentary Stamp Tax (DST) in the total amount of P175,069.36 computed at the rate of P1.50 for every P200.00 (or at P.0075) of the selling price of the shares as follows:

Exhibits	No. of Shares	Selling Price	Tax Rate	DST Paid
GG & LL	4,599	P 803,675.25	P 0.0075	P 6,027.57
HH & MM	32,243	5,634,464.25	0.0075	42,258.48
II & NN	32,246	5,634,988.50	0.0075	42,262.42
JJ & OO	32,244	5,634,639.00	0.0075	42,259.79
KK & PP	32,245	5,634,813.75	0.0075	42,261.10
			Total:	P 175,069.36

However, petitioner alleged that she had erroneously computed the CGT on the sold shares by applying 10% on the entire net capital gain instead of 5% on the first P100,000.00 and 10% on the amount in excess of P100,000.00 as prescribed under Section 24(C) of the Tax Code. Also, petitioner alleged that she had incorrectly used the selling price in computing the DST instead of the par value of the shares as provided under Section 176 of the Tax Code. Consequently, petitioner through counsel, filed on April 6, 1999, an administrative claim for refund of the amount of P95,884.36, representing alleged overpaid CGT and DST in the amounts of P25,000.00 and P70,884.36, respectively, detailed as follows:

				CAPITAL GAINS TAX (CGT)		
No. of Shares	Selling Price	Acquisition Cost	Net Capital Gain	Amount Paid	Amount Due	Excess Payment
4,599	P 803,675.25	P 459,900.00	P 343,775.25	P 34,377.52	P 29,377.52	P 5,000.00
32,243	5,634,464.25	3,224,300.00	2,410,164.25	241,016.43	236,016.43	5,000.00
32,246	5,634,988.50	3,224,600.00	2,410,388.50	241,038.85	236,038.85	5,000.00
32,244	5,634,639.00	3,224,400.00	2,410,239.00	241,023.90	236,023.90	5,000.00
32,245	5,634,813.75	3,224,500.00	2,410,313.75	241,031.38	236,031.38	5,000.00
				P 998,488.08	P 973,488.08	P 25,000.00

			DOCUMENTARY STAMP TAX (DST)		
No. of Shares	Selling Price	Par Value	Amount Paid	Amount Due	Excess Payment
4,599	P 803,675.25	P 459,900.00	P 6,027.57	P 3,450.00	P 2,577.57
32,243	5,634,464.25	3,224,300.00	42,258.48	24,183.00	18,075.48
32,246	5,634,988.50	3,224,600.00	42,262.42	24,184.50	14,077.92
32,244	5,634,639.00	3,224,400.00	42,259.79	24,183.00	18,076.79
32,245	5,634,813.75	3,224,500.00	42,261.10	24,184.50	18,076.60
			P 175,069.36	P 100,185.00	P 70,884.36
Total CGT & DST Excess Payment					P 95,884.36

Unable to obtain an affirmative response from the respondent, petitioner elevated its claim before this court via a Petition for Review on January 15, 2001 in order to toll the running of the prescriptive period provided under Section 229 of the Tax Code.

Respondent, in his Answer filed on February 21, 2001, interposed the following Special and Affirmative Defenses:

> "3. The administrative claim for refund is still undergoing routinary investigation/examination by respondent's Bureau;
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> 4. The petitioner's allegation that it erroneously and excessively paid the capital gains tax and documentary stamp tax on the transaction concerned does not ipso facto warrant the refund/credit;
>
> 5. Claims for tax refund or tax credit are construed in strictissimi juris against the taxpayer as they partake the nature of an exemption from tax, and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of petitioner to prove the same is fatal to its claim for refund/credit; and
>
> 6. Petitioner must show that it has complied with the provisions of Sections 204 and 229 of the 1997 Tax Code."

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not the petitioner has erroneously computed the subject Capital Gains Tax and Documentary Stamp Tax resulting in overpayment of CGT and DST;

2. Whether or not the CGT imposable on the Deed of Assignment executed be computed at 10% of the net capital gain; and

3. Whether or not the basis of the DST is the par value of the shares of stocks assigned.

(Joint Stipulation, CTA records, pages 105-106)

After a scrutiny of petitioner's documentary evidence and the laws applicable in the instant case, the court finds petitioner entitled to the claim.

Section 24(C) of the Tax Code states:

> "(C) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange. – The provisions of Section 39(B) notwithstanding, a final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.
>
> "Not over P100,000 .... 5%
> "On any amount in excess of P100,000 ....10%"

It is clear from the foregoing provisions of the Tax Code that the net capital gain (i.e., the difference between the selling price and acquisition cost) derived by the individual seller on the sale of shares of stock in a domestic corporation not traded in the stock exchange shall be taxed at the schedular rate of 5% for the first P100,000.00 and 10% on the amount in excess of P100,000. The various Capital Gains Tax Returns (Exhibits W, X, Y, Z & AA) and Urban Bank official receipts (Exhibits BB, CC, DD, EE & FF), all dated January 15, 1999, show that petitioner paid CGT amounting to P998,488.08 instead of the correct CGT due of P973,488.08, resulting to an overpayment of P25, 000.00.

As to the claimed DST overpayment, Section 176 of the Tax Code provides as follows:

> "**SEC. 176.** *Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares or Certificates of Stock.* – On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-

> bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock." (Underlining supplied.)

Under the aforequoted provisions of the Tax Code, the DST on the transfer of shares or certificates of stock shall be computed at the rate of P1.50 on each P200.00 or fractional part thereof, of the par value of such shares or certificates of stock and not on the selling price of the shares. It is evident from the Documentary Stamp Tax Declarations filed by petitioner on January 15, 1999 and the corresponding Urban Bank official receipts that petitioner used her selling price in the computation and consequent payment of the DST totalling P175,069.36. However, it is to be noted that the correct DST due on the subject transfer of shares of stock should only be P100,182.75, resulting to an overpayment of P74,886.61 instead of P70,884.36 as computed by petitioner in its administrative claim for refund as well as in the Petition for Review, thus:

No. of Shares	Selling Price	Par Value	Tax Paid	Tax Due	Excess Payment
4,599	P 803,675.25	P 459,900.00	P 6,027.57	P 3,449.25	P 2,578.32
32,243	5,634,464.25	3,224,300.00	42,258.48	24,182.25	18,076.23
32,246	5,634,988.50	3,224,600.00	42,262.42	24,184.50	18,077.92
32,244	5,634,639.00	3,224,400.00	42,259.79	24,183.00	18,076.79
32,245	5,634,813.75	3,224,500.00	42,261.10	24,183.75	18,077.35
			P 175,069.36	P 100,182.75	P 74,886.61

While petitioner had an actual DST overpayment of P74,886.61, petitioner is entitled only to the lesser amount of P70,884.36, which amount was prayed for in both the administrative claim and in the Petition for Review.

WHEREFORE, in view of the foregoing, the court finds the instant petition meritorious and in accordance with law. 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 P95,884.36 representing overpayment of Capital Gains Tax and Documentary Stamp Tax relative to the transfer of petitioner's shares of stock.

SO ORDERED.

Juanito C. Castañeda, Jr.
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