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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

CITICORP SCRINGEOUR VICKERS PHILIPPINES, INC.,
Petitioner,

-versus-

C. T. A. CASE NO. 4633

5/6/94

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a simple case of refund involving a transaction engaged by petitioner whereby two different taxes were voluntarily paid by it under separate provisions of the National Internal Revenue Code (NIRC).

Petitioner is a private corporation duly organized and existing under the laws of the Philippines, engaged in the business as dealer in securities. In common parlance, it is a stockbroker. Accordingly, under Section 116 of the NIRC, petitioner pays a percentage tax equivalent to six percent (6%) of their gross income.

Petitioner is a corporate member of the Manila Golf and Country Club and was issued a membership certification equivalent to one hundred (100) units of said club.

On February 21, 1989, petitioner sold, assigned and transferred all its rights, title and interests as member of said club to Citibank, N. A., in consideration of the sum of P2,500,000.00.

Petitioner reported the said transaction, together with its sale of various securities, as an ordinary sale of securities in its quarterly percentage tax returns for June 1989 and July 20, 1989, paid the 1989 second quarter six percent (6%) percentage tax amounting to P135,467.78.

For the same transaction, petitioner submitted to the respondent, Bureau of Internal Revenue, its voluntary offer to pay the capital gains tax on the sale of its membership share (100 units) in the Manila Golf and Country Club under Section 24 (9) 2 (A) of the Tax Code as shown below:

Gross selling price	P 2,500,000.00
Less : cost	550,000.00

Net Capital Gain	P 1,950,000.00
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Tax due		
P 100,000 x 10%	P	10,000.00
1,850,000 x 20%		370,000.00
Total Tax Due	P	380,000.00

On December 10, 1990, Deputy Commissioner V. A. Deoferio, Jr. of the Bureau of Internal Revenue, accepted petitioner's voluntary offer to pay the capital gains tax in this wise:

> ". . .since your client has already paid the amount of P487,858.00 representing the basic tax plus interest under Confirmation Receipt No. B20147302 dated August 14, 1990, this case is now considered closed and terminated."

Subsequently, on October 8, 1990, petitioner, through its external auditors, filed with the BIR Appellate Division a claim for refund or tax credit of percentage tax in the sum of P117,000.00 representing the six percent (6%) tax on dealers in securities which it claimed was erroneously paid for with regard to the sale of its membership share in Manila Golf and Country Club to Citibank, N. A.

Respondent failed to act on petitioner's claim for refund. Petitioner instituted the instant petition on July 18, 1991, to beat the two-year prescriptive period for filing a judicial claim for refund.

During the proceedings before this court, petitioner presented testimonial and documentary evidence undeniably establishing that:

a) Petitioner acquired Membership Certificate No. 2017 from Manila Golf and Country Club for P550,000.⁰⁰.

b) On February 21, 1989, petitioner sold its membership shares to Citibank, N. A. for P2,500,000.⁰⁰;

c) Petitioner reported and in fact filed the corresponding return of said sale as an ordinary sale in securities and correspondingly paid the 6% tax as dealer of said securities.

d) Petitioner considered said "classification" as erroneous and instead, voluntarily offered and paid to the Bureau of Internal Revenue the capital gains tax after considering the transaction as sale of capital assets.

Respondent repeatedly failed to appear and present his evidence and the Court in its Resolution of February 16, 1993, stated that:

> "Confirming the order given in open court on February 1, 1993, the Court considers respondent's presentation of his evidence to have been deemed waived, considering the continuous non-appearance of respondent's counsel of record on the hearings of this case scheduled last September 21, 1992, October 29, 1992, December 14, 1992 and February 1, 1993."

Neither did respondent file a memorandum. Respondent did not even transmit to the Court the records of the case in her possession as required by the Rules of this Court (Section 2, Rule 7).

The sole issue to be resolved is whether or not petitioner erroneously paid the six percent (6%) tax on its sale of its membership shares in Manila Golf and Country Club to Citibank, N.A. and therefore is entitled to a refund thereof in the sum of P117,000.00.

We find for the petitioner.

Except for the blanket denials made by respondent in his Answer, no contravening evidence was submitted to dispute petitioner's claim. In General Foods Corporation versus Commissioner of Internal Revenue, CTA Case No. 3900, February 2, 1988, we ruled that:

> "Considering that respondent Commissioner did not present any witness or evidence to prove its allegations of non-allowance and decided to rest its case by submitting its case based upon the pleading, we therefore stand by the truth of petitioner's evidence."

Be that as it may, based on the evidence submitted by petitioner, it stands to reason that it committed an error in considering the transaction involving the sale of its membership in Manila Golf and Country Club as a sale of security and accordingly, paid the corresponding percentage tax. It is therefore entitled to a refund or tax credit in its favor.

Securities in general are "stock, stock rights, and debt instruments such as bonds, debentures, notes, or certificates issued by a corporation or government entity. For tax purposes, the Code often uses stock and securities in this sense; the term security often means any bond, debenture, note or certificate or other evidence of indebtedness by a corporation or government entity" (West's Tax Law Dictionary, 1993 edition). Membership shares owned by petitioner which was subsequently sold to Citibank, N. A., would not fall under this definition. Moreover, in this particular sale of the aforementioned membership shares owned by petitioner, it cannot be considered as a dealer in securities considering that the sale was not for the purpose of resale at a profit but rather for the benefit and enjoyment of its corporate officers and employees. It was in fact property held by the petitioner not connected with its trade or business. Neither was said property held for resale in the ordinary course of its business. Therefore, as capital asset which petitioner had voluntarily declared, it was subject to capital gains tax which the former had already settled with respondent.

WHEREFORE, judgment is hereby rendered ordering respondent to grant petitioner's claim for refund or the issuance of a tax credit in its favor in the amount of P117,000.$^{\underline{oo}}$, representing erroneous payment of percentage tax.

SO ORDERED.

Quezon City, Metro Manila, May 6, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals