REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. AND TELECOMMUNICATIONS TECHNOLOGIES PHILIPPINES INC.,
Petitioners,

- versus -

C.T.A. CASE NO. 6026

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 09 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of Two Million Five Hundred Thousand (P2,500,000.00) Pesos allegedly representing the documentary stamp tax paid on the issuance of stock dividends by Telecommunications Technologies Philippines, Inc. to Eastern Telecommunications Philippines, Inc. on March 10, 1998.

Petitioners Eastern Telecommunications Philippines, Inc. (ETPI) and Telecommunications Technologies Philippines, Inc. (Teletech) are corporations duly organized and existing under and by virtue of Philippine laws (par. 1, Joint Stipulation of Facts and Issues). Both are franchise grantees and existing by virtue of legislative franchises under Republic Act Nos. 808 and 7617, as amended, respectively. Both corporations hold office at the Telecoms Plaza Bldg., 316 Sen. Gil Puyat Avenue, Salcedo Village, Makati City, Philippines. Teletech is a 100% wholly-owned subsidiary of ETPI.

In March 1995, Teletech's authorized capital stock was increased from Two Hundred Million Pesos (Php200,000,000) to Four Hundred Fifty Million Pesos (Php450,000,000), which increase amounts to Two Hundred Fifty Million Pesos (Php250,000,000). Out of the increase, ETPI subscribed and paid for 45,750,000 common shares at Php1.00 par value per share and 4,250 preferred shares at Php1000.00 par value per share and was issued 45,750,000 common shares and 4,250 preferred shares, for which the amount of Php500,000 as Documentary Stamp Tax (DST) was paid by Teletech on March 1995.

In September 1997, petitioner Teletech's authorized capital stock was increased from Four Hundred Fifty Million Pesos (Php450,000,000.00) divided into 430,000,000 common shares at Php1.00 par value per share and 20,000 preferred shares at Php 1000.00 par value per share, to Two Billion Pesos (Php2,000,000,000.00) common shares with par value of One Peso (P1.00) per share. Out of the increase, petitioner ETPI subscribed and paid for Five Hundred Eighty Two Million (582,000,000) shares (at a par value of Php1.00/share) or Php 582,000,000.00 pesos worth of shares. On March 10, 1998, petitioner ETPI paid the amount of Php 2,500,000.00 as the corresponding Documentary Stamp Taxes to the Bureau of Internal Revenue (BIR) through Union Bank of the Philippines (par 4, Joint Stipulation of Facts and Issues).

Petitioners ETPI and Teletech alleged that they are exempt from the payment of the DST by virtue of their respective legislative franchises, to which the Bureau of Internal Revenue had likewise confirmed in BIR Ruling Nos. DA-276-98 and DA-277-98, both dated June 26, 1998. Thus, on March 7, 2000, a claim for refund was filed by the petitioners with BIR Revenue District Office No. 49, Revenue Region No. 8, through a letter-request, pursuant to the procedures prescribed in Revenue Regulations No. 7-95, as amended (Exhibit "C").

On March 10, 2000, petitioners filed this Petition for Review to toll the running of the two-year prescriptive period allowed by law.

Instead of filing an Answer, respondent filed a Motion to Dismiss on April 3, 2000, on the ground that the Petition for Review filed by petitioners failed to show on its face compliance with the condition sine qua non enunciated in Section 230 of the 1993 NIRC (now 229) before a petition for review may be filed before this court. According to respondent, the petition for Review failed to allege that a claim for refund has been duly filed with the Respondent Commissioner (p 27, CTA Records).

On May 9, 2000, petitioners filed an "Opposition with Motion to Admit Amended Petition for Review," claiming that the failure to allege the same and attach a copy thereof to the Petition for Review earlier filed with the court was merely due to inadvertence.

In a Resolution promulgated on June 21, 2000, the court denied respondent's Motion to Dismiss and admitted petitioners' Amended Petition for Review, consequently ordering respondent to file his Answer to the amended petition.

In his Answer filed on July 24, 2000, respondent raised the following Special and Affirmative Defenses:

(5) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau.

(6) There is no showing in the Amended Petition that the tax sought to be refunded was actually paid.

(7) Granting that the tax sought to be refunded has actually been paid, the claim is already barred by prescription.

7.1 When petitioners amended their petition on May 9, 2000, the amended pleading superseded the original pleading which is deemed withdrawn and no longer constitutes part of the record. However, the filing of the amended pleading does not retroact to the date of the filing of the original. Hence, the statute of limitations runs until the filing of the amendment (Ruyman, et al vs. Director of Lands 34 Phil 429).

7.2 Petitioners allegedly paid the documentary stamp tax on March 10, 1998. However, the amended petition was filed on May 9, 2000 which is already beyond the two (2) year prescriptive period to claim the refund.

(8) Claims for tax refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax.

(9) In an action for tax credit/refund, the burden is upon the taxpayer to establish its right thereto, and failure to sustain this burden is fatal to said claim [Surigao Consolidated Mining Co. vs. CIR 9 SCRA 728-734 (1963)].

(10) It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229, both of the 1997 Tax Code.

On March 14, 2002, this court rendered a Decision denying petitioners' claim for refund or issuance of a tax credit certificate for documentary stamp taxes paid in the amount of Two Million Five Hundred Pesos (Php 2,500,000.00), for failure of petitioner to show proof that they had paid their respective franchise taxes. The pertinent portion of our Decision reads as follows:

> *"Moreover, BIR Ruling Nos. DA-276-98 and DA-277-98 which were relied upon by Petitioner and presented as Exhibits M and N, declared that the phrase "in lieu of" shall apply only after payment of the franchise tax of 5% for ETPI and 3% for Teletech. Exemption from other taxes will only take effect after payment of their respective franchise taxes.*
>
> *In fine, ETPI and Teletech may claim exemption from DST upon proof of payment of their respective franchises. Thus, failure by Petitioners ETPI and Teletech to prove that their respective franchise taxes have been paid is fatal to their claim.*
>
> *WHEREFORE, in view of the all the foregoing, the claim for refund by Petitioner ETPI and Teletech is hereby DENIED for lack of merit.*
>
> *SO ORDERED."*

On April 18, 2002, petitioners filed a Motion for Reconsideration (re: Decision dated 14 March 2002) with Motion for New Trial seeking for a reversal of this court's Decision promulgated on March 14, 2002 on the following grounds:

(1) At the outset, the Supreme Court, in Commissioner of Internal Revenue vs. Court of Tax Appeals, 195 SCRA 444 (1991), has ruled with finality that Petitioner ETPI's legislative franchise, Republic Act No. 808 as amended, exempts the franchisee from payment of all taxes, except franchise and real property taxes.

(2) The phrase "in lieu of all taxes" in their respective legislative franchises operatively and effectively exempts them from the payment of Documentary Stamp Tax, and does not require as a condition the payment of franchise tax before such exemption may apply.

   a. A clear reading of petitioners' legislative franchises shows that no such condition of payment of franchise tax is required before petitioners may be exempted from payment of Documentary Stamp Tax. In the case cited by the Honorable Court, PLDT v CIR, CTA Case No. 5106, 18 December 1995, the Honorable Court has simply interpreted the "in lieu of" provision to mean that none other than the tax specified can be demanded, and that it has the effect of exempting from taxation all other taxes not mentioned therein.

b. Moreover, the Supreme Court has, in a long line of cases, interpreted the "in lieu of" clause in legislative franchises as exempting the franchisee from all taxes other than the franchise tax specifically mentioned in said franchises.

(3) Even assuming arguendo that the payment of franchise tax is a condition for petitioners' exemption from Documentary Stamp Tax, petitioners manifest that such condition has been met when petitioners complied with the Expanded VAT Law. Under said law, petitioners are no longer subject to franchise tax but to the ten percent (10%) value-added tax under Section 108 of the National Internal Revenue Code, as amended. Hence, petitioners are entitled to a refund of the DST in the amount of Two Million Five Hundred Thousand Pesos (P2,500,000.00).

Finally, in a Resolution promulgated on July 19, 2002, the court granted petitioners' Motion for Reconsideration (Re: Decision dated 14 March 2002) with Motion for New Trial. Thus, our Decision in the above-entitled case promulgated on March 14, 2002 was set aside and petitioner was allowed to present additional evidence.

The following issues have been stipulated by both parties in their Joint Stipulation of Facts and Issues, to wit:

1. Whether or nor petitioners are exempt from DST and thus entitled to a refund of the DST in the amount of Two Million Five Hundred Thousand (P2,500,000.00) Pesos
2. Whether or not petitioners' claim for refund of the DST was filed within the two (2) year prescriptive period as required under Section 229 of the National Internal Revenue Code, as amended.

We shall resolve first the issue on prescription.

It is undisputed that the subject documentary stamp tax was paid to the BIR through Unionbank on March 10, 1998 (par. 4, Joint Stipulation of Facts and Issues; Annexes C and D, Petition for Review). On the other hand, petitioners' administrative and judicial claims for refund were filed on March 7, 2002 and March 10, 2002, respectively. Considering that Section 229 of the 1997 Tax Code mandates that a claim for refund must be filed within two years from the date of payment of the tax and under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days, petitioners, therefore, had 730 days from the date of payment of the tax on March 10, 1998 within which to file the instant petition. It bears stressing, however, that the year 2000 is a leap year. Consequently, counting from March 10, 1998, the two-year prescriptive period expired on March 9, 2000. Thus, when petitioners filed this claim before us on March 10, 2000, prescription had already set in.

In a long line of cases decided by this court (***Maersk-Tabacalera Shipping vs. Commissioner of Internal Revenue, CTA Case No. 5006, February 20, 1996; ABS-CBN Broadcasting Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4857, July 24, 1997; Protectors of Assets and Personnel Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5259, April 21, 1998; DMCI Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5573, November 5, 1999; Asianbank Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6095, October 9, 2001; Bataan Polyethylene Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6147, February 22, 2002; and Stock Transfer Services vs. Commissioner of Internal Revenue, CTA Case no. 6094, June 4, 2002),*** the leap year was considered in determining prescriptive period. Thus, in the case of ***Asianbank Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6095, October 9, 2001,*** the court ruled in this wise:

> "Apropos to the issue of prescription is the provision of Article 13 of the Civil Code which provides, thus:
>
> > "Article 13. Where the laws speak of years, months, days or nights, <u>it shall be understood that years are of three hundred sixty five days each;</u> months, of thirty days, days of twenty-four hours; and nights from sunset to sunrise.
> >
> > If months are designated by their name they shall be computed by

the number of days which they respectively have.

In computing a period, the first day shall be excluded and the last day included." (Underscoring ours)

Except for a bare allegation that the above-cited provision was already amended and/or superseded by the provisions of the Revised Administrative Code of 1987 on legal periods, Petitioner has not shown any proof that the High Court, from the time the Revised Administrative Code became effective, applied its provisions in resolving issues on prescription. In other words, the Supreme Court and other courts for that matter, continuously adhered to its previous interpretation of "year" as containing 365 days as provided under Article 13 of the Civil Code instead of 12 months provided under the Revised Administrative Code. Unfortunately for the Petitioner, this Court has yet to find any statute or decision in support of this pretense."

This conclusion finds support in the case of ***State Investment House, Inc. v. Court of Appeals, GR No. 99308, November 13, 1992,*** where the Supreme Court ruled that:

"Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 is a leap year, Cuenca had only until August 23, 1984, the 365^{th} day after registration of the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on August 24, 1984.

It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last day to redeem would be and indeed fell on August 23, 1984, said year being a leap year (cf Go vs. Dizon, et al., G.R. No. 75915-16, September 18, 1992)."

(see also ***Flora v. Pajarillaga, GR No. L-24806, January 22, 1980; Caniza v. People of the Philippines, GR No. L-53776, March 18, 1988; and Manacop v. Court of Appeals, GR No. 104875, November 13, 1992).***

Thus, when it appears from the pleadings or the evidence on record that an action is barred by prescription, the Court is mandated to dismiss the same (***Anido vs. Negado, 367 SCRA 512***). The instant Petition for Review having been filed only on March 10, 2000, one day beyond the prescriptive period, we are left with no recourse but to deny the claim on the ground of prescription.

WHEREFORE, petitioners' claim for refund or issuance of a tax credit certificate in the amount of Two Million Five Hundred Thousand Pesos (P2,500,000.00) representing DST paid on the issuance of stock dividends by Teletech to ETPI on March 10, 1998 is hereby **DENIED** on account of prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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