REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUN LIFE ASSURANCE COMPANY OF CANADA (Phil. Branch),
Petitioner,

- versus -

C.T.A. CASE NO. 5129

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 05 1997

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DECISION

This is a judicial claim for refund/issuance of tax credit for alleged erroneously paid or overpaid insurance premium taxes covering the second, third and fourth quarters of 1992 in the amount of P688,733.98.

Petitioner is a resident foreign corporation organized and existing under and by virtue of the laws of the Republic of Canada and is doing business in the Philippines through its branch located at the Interbank Building, Paseo de Roxas, Makati, Metro Manila. It is primarily engaged in the life insurance business and as such derives income mainly in the form of insurance premiums paid by its insured policyholders which premiums are subject to percentage tax under Section 125 of the Tax Code (Petition for Review, p. 1, CTA records).

The facts are as hereunder stated.

For the second, third and fourth quarters of 1992, petitioner filed its insurance premium tax returns and made corresponding payments thereof with respondent's Bureau on July 17, 1992, October 20, 1992 and January 19, 1993, respectively (Exhibits "A", "B", "C", respectively).

On a later date, petitioner allegedly discovered that errors were committed in the determination and computation of its actual premium tax liability for the aforesaid taxable quarters resulting in an overpayment of P688,733.98. Petitioner attributed the errors to the changes made in the description and composition of dividend payments in the computer software (program) designed for the purpose of computing petitioner's quarterly premium tax liability (Petition, pp. 2-3, CTA record).

At this juncture, it is to be noted that life insurance policies issued by the petitioner are either participating or non-participating. Participating policyholders are, among other privileges, entitled to dividend payments from the petitioner which are either paid in cash, or are applied in payment of renewal premiums or are applied in the purchase of paid-up additions, that is, to increase the face value of the existing insurance policy (Ibid., pp. 1-2, CTA record).

The ascribed errors comprised of the following, to wit: that cash dividend payments to policyholders were erroneously treated as automatic premium advances, and were therefore added to instead of deducted, from taxable collections; and that premium reduction (i.e., dividends applied in payment of renewal premiums) and paid-up addition dividends (i.e., dividends applied in the purchase of paid-up additions) were not deducted from total collections in computing for the net taxable amount (ibid., pp. 2-3, CTA record).

As a consequence petitioner, in a written claim, dated March 29, 1994, and received by respondent's Bureau on even date, requested for a refund/issuance of tax credit of said overpaid premium taxes.

However, with the resulting inaction of the respondent on the subject claim and the two-year prescriptive period within which a claim for refund may be availed of about to expire, petitioner resorted to this Petition for Review on July 15, 1994 in order to forestall the running of said period.

Hence, this appeal.

After a thorough review of the records of the case at bar, We observed that respondent does not present much opposition to petitioner's claim, as can be gleaned from the special and affirmative defenses stated in her Answer, to wit:

> 5. Petitioner must prove that the taxes it paid subject of refund were erroneously or illegally collected. Taxes are presumed to have been collected in accordance with law.
>
> 6. Petitioner must show that it has complied with the provisions of Sections 204 and 230 of the Tax Code.
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> 7. Likewise, claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation **(Manila Electric Company v. Commissioner of Internal Revenue, 67 SCRA 351 (1975).**

The lone issue to be tackled by this Court thus in this petition is simply petitioner's entilement to the refund sought.

Undoubtedly, petitioner has surmounted the burden of proof being asked by the respondent. It has submitted in evidence the worksheet and the memorandum prepared by respondent's own revenue enforcement officers, both revealing a favorable recommendation on the granting of herein claim (Exhibits "G" and "H", pp. 47-48, BIR records). In her Comment to petitioner's formal offer of the just mentioned documents, respondent manifested that she had no objection to their admission (Comment, p. 59, CTA records). This only goes to show that respondent in the case at bar conforms to the findings of her revenue enforcement officers, otherwise she could have readily attempted to deny or controvert the correctness of their findings. Records bear that respondent did not introduce any countervailing evidence on said findings. We see no other reason thus to deviate from the factual findings of respondent's revenue enforcement officers.

Be that as it may, We find the uncontested favorable findings of the revenue enforecement officers of the respondent sufficient to establish the veracity of petitioner's allegations. It is presumed that they, as public officers, performed their offical duty in a regular manner (Section 3(m), Rule 131, Revised Rules of Court), and therfore are considered to have reviewed every minute detail necessary for the granting of the subject claim.

On a purely legal point of view, the refund of erroneously paid tax on cash dividends is nothing new. In the case of **The Philippine American Life Insurance Company v. Commissioner of Internal Revenue, CTA Case No. 1689, November 12, 1973,** *Certiorari* denied, G.R. No. L-38292, **March 8, 1974,** this Court held the opinion that "dividends paid to participating policyholders are in reality return of excess premiums which were properly excluded from petitioner's taxable receipts for purposes of computing the premium tax."

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Respondent is hereby **ORDERED** to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner SUN LIFE ASSURANCE COMPANY OF CANADA (Phil. Branch) in the amount of **P688,733.98**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals