REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIMITIVO V. ANDAYA,
represented by his
Attorney - in fact
TOM Z. PALAFOX,
Petitioner,

- versus -

C.T.A. CASE NO. 4646

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated :
FEB 01 1995

x - x

DECISION

This is judicial claim for refund by petitioner in the amount of P23,153.87 representing allegedly erroneously paid capital gains and documentary stamp taxes.

The records show that petitioner is a Filipino citizen of legal age with address at 2135 W. Kent Street, Los Angeles California, U.S.A. and Blk. 12 Lot 2, Excise St. BIR Village, Fairview, Quezon City, and is the owner of a parcel of land with T.C.T. No. 84592 of the Registry of Deeds of Quezon City.

On August 2, 1989, petitioner executed a Deed of absolute sale covering said parcel of land in favor of Vendees Paulina Z. Palafox, Tom Z. Palafox, Joseph Z. Palafox, Luisa Z. Palafox for P279,400.00. (Annex "A").

On September 22, 1991, petitioner paid the Capital gains tax in the amount of P19,653.87 as evidenced by RTR No. 5651458 and CR No. 18058960 both dated September 22, 1991 and documentary stamp tax paid under RTR No. 585149 and CR No. 18058961 in the amount of P3,500.00 on the above transaction.

Petitioner, however, alleged that the said sale did not push through, as both petitioner and Vendees mutually agreed to cancel the sale due to the alleged failure of the Vendees to pay the contract price in full.

On March 4, 1991 petitioner again sold the same parcel of land to Camhome Realty and Development Corporation and paid the corresponding capital gains tax in the amount of P25,690.00 under RTR #9891440 and CR #2198324 both dated March 11, 1991 and the documentary stamp tax in the amount of P5,080.00 under RTR 9892439 and CR 21928325 both dated March 11, 1991.

On September 20, 1991 petitioner through his representative Tom Z. Palafox filed with respondent a claim for refund of prior capital gains and documentary stamp taxes paid in the total amount of P23,153.87.

Petitioner, without waiting for respondent's action on his claim for refund, and in order to toll the running of the two(2) year prescriptive period, filed the instant petition for review on September 21, 1991.

Respondent, in the answer and by way of special and affirmative defences, alleges among others, that:

> 1. Claims for refund are strictly construed against the claimant for the same partake of the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma,** 31 SCRA 95). Hence, it is incumbent upon petitioner to show that the he has a clear right thereto under the law;
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> 2. The Petition, however, fails to show that the taxes allegedly paid were either "erroneously or illegally received" by the respondent, as required by Section 204 of the National Internal Revenue Code. Assuming for the sake of argument that the first contract of sale was indeed mutually cancelled by the parties for failure of the vendees to pay the full contract price, this does not change the fact that there was, initially, a perfected contract of sale which justifies the payment of taxes allegedly made thereon by petitioner. Evident from the very Petition and its annex is that the alleged double payment of taxes was, in fact, not for one and the same transaction, but for two separate, valid and perfected contracts of sale. Thus, the Petition clearly does not state a cause of action.

The issue having been joined with the filing of respondent's answer, the case was set for trial on February 18, 1994 and on other dates but the same were postponed upon motion and manifestation of the parties.

On September 8, 1992, petitioner filed a motion to archive/suspend proceedings a the ground that the possible relief he prayed for, may be granted by respondent, which motion was granted by the Court, but only for a period of 6 months.

After the expiration of said period and during the hearing on March 23, 1993, petitioner asked that he be given 30 days within which to present his evidence. The case was reset for hearing on April 15, 1993, where petitioner requested for the marking of certain documents in open court. Marking of the documents having been done, petitioner asked for continuance, for him to present his witness.

During the hearing of the case on June 2, 1993, the Court, upon request of petitioner, gave him 30 days to submit his formal offer of evidence and respondent was given 15 days from receipt thereof to comment thereto, after which the said offer will be considered submitted for resolution.

Subsequently, however, on July 1, 1993 petitioner filed a motion for extension of time to file formal offer of evidence, and for the reason stated therein, petitioner was given by the Court an extension of 30 days from July 3, 1993 within which to file his formal offer of evidence with no further extension.

On September 13, 1993, it appearing that petitioner failed to file his formal offer of evidence within the time given to him by the Court, the case was set for hearing on September 30, 1993 for reception of respondent's evidence.

During the hearing of the case September 30, 1993 and there being no offer of evidence made by petitioner, respondent manifested that he is submitting the case for decision based on the pleadings.

The only issue in this appeal is whether not petitioner is entitled to the refund of P23,153.87, representing the alleged erroneously paid capital gains and documentary stamp taxes.

As indicated earlier, petitioner failed to submit and offer as evidence certain documents previously marked in support of his cause.

In view thereof, the glaring fact remains that in this case there is total absence of any evidence on record that could be the legal basis of the relief prayed for by petitioner. It may not be amiss to point out under such situation, that in an action for tax refund/credits the taxpayer has the burden of showing that the taxes paid are erroneously collected and that failure to meet such burden is fatal to its cause, as such claims for refund are strictly construed against the claimant. (**Citibank N.A. Philippine branch vs. The Commissioner of Internal Revenue,** CTA Case No. 4258, April 1, 1994).

This court has ruled in the case of **A.F. Holding and Management Corporation vs. The Commissioner of Internal Revenue in this wise:**

> "We cannot just make our own wild conjectures as to how the amount was arrived at wanting the necessary supporting documents. Of course, the petitioner does not expect this Court to go beyond evaluating evidence which are only at hand. In short, the claim for refund falls under the category of mere self-serving stipulations advance by the petitioner. In a claim for refund, as pointed out by the respondent, it is incumbent upon the petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund. This is true since claims for refund are construed strictly against the claimant for it partakes of the nature of exemption from taxation. (**Commissioner of Internal Revenue vs. Ledesma,** G.R. No. L-17509, January 30, 1970, 31 SCRA 95)."

We agree with the position of respondent that the amount of P23,153.87 was presumptively for the payment of capital gains and documentary stamp taxes due on a perfected contract of sale of the said parcel of land, executed on March 4, 1991 by and between petitioner and vendee Camhouse Realty and Development Corporation. Such presumption, however, could have been easily overturned had the petitioner presented the necessary supporting documents, such as the original copy of alleged contract of sale, the second Deed of Sale, payment order and the corresponding confirmation receipts to prove petitioner's cause, following the time-tested doctrine that claims for refund are construed strictly against the claimant (**Commissioner of Internal Revenue vs. Ledesma,** 31 SCRA 95).

And, although documentary evidence for petitioner were identified during the hearing, the same were never offered for admission. Thus, in the case of **TMX Philippines Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 4397, March 29, 1993 this court ruled that:

> "Such evidences therefore although identified during the hearing are of no value and cannot be considered by the court. Sections 35 of Rule 132 of the Rule of Court is categorically clear on the matters thus:
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> > **Sec. 35 - *Offer of evidence.*** - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (Emphasis supplied)
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> "Where the evidence consisting of documents were not formally offered at the hearing, even if they are material to the case, the court must excluded the same from the records: it has no authority to consider them" (**Ayala de Roxas vs. Valencia,** 5 Phil. 182).

IN VIEW OF THE FOREGOING, this court hereby **DENIES** the claim for refund of petitioner for lack of merit. **WITH COST.**

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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