REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST SOUTHERN PHILIPPINES ENTERPRISES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5988

Promulgated:

JAN 17 2002

x - x

DECISION

This is a petition which seeks to refund the amount of P350,005.00, allegedly representing erroneously paid documentary stamp tax, resulting from the erroneous inclusion of the amount of P35,000,000.00 deposit on stock subscription, paid by Petitioner on December 29, 1997.

The antecedent facts follow.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the 6th Floor Benpres Building, Exchange Road corner Meralco Avenue, Pasig City (par. 1, Joint Stipulation of Facts). Its former name is First Agricultural Resource Management, Inc. but was subsequently changed to First Southern Philippines Enterprises, Incorporated. The amendment was approved by the Securities and Exchange Commission (SEC) on November 19, 1998 (Exhibit B).

On November 27, 1997, Respondent issued Revenue Memorandum Order (RMO) No. 63-97 (Exhibit R) to implement its ongoing Voluntary Assessment Program (VAP). RMO 63-97 allowed taxpayers to pay basic deficiency taxes, including documentary stamp tax without penalties up to December 29, 1997.

Pursuant thereto, on December 29, 1997, Petitioner filed with the BIR a Documentary Stamp Tax Declaration, or BIR Form No. 2000 (Exhibit S), and paid the amount of P537,524.50 as documentary stamp tax on the subscription of Petitioner's shares of stock and subsequent transfers thereof.

On March 10, 1998, Petitioner filed again with the BIR its Corporate Stock Documentary Stamp Tax Declaration for Existing Corp. as of February 28, 1998 (BIR Form No. 2000-A) (Exhibits "T" and "T-1"), showing the breakdown of the shares to which the P537,524.50 pertained.

Upon review of its records, however, Petitioner allegedly realized that the total documentary stamp tax due should have been only P187,509.75, corresponding to the following subscriptions:

(a) subscription of incorporators as shown in Petitioner's original Articles of Incorporation (Exhibit G):

Name	No. of Shares Subscribed
First Philippine Holdings Corp. (FPHC)	24,989
Oscar M. Lopez	5
Augusto Almeda-Lopez	1
Elpidio L. Ibañez	1
Christian S. Monsod	1
Camilo D. Quiason	1
Ernesto B. Rufino, Jr.	1
Steve E. Psinakis	1

25,000; and
at P100.00 par value
x P2.00 DST/
P200.00 par value –
P25,000.00 DST

(b) additional subscription of First Philippine Holdings Corporation of 162,500 shares (at P100.00 par value x P2.00 DST/P200.00 par value = P162,500.00 DST), shown on the SEC Certificate of Filing of Certificate of Increase of Capital Stock of Petitioner dated 21 April 1997 and Director's Certificate on the increase of Capital Stock (Exhibit H). In addition to the above subscriptions, the documentary stamp tax due from the Petitioner also includes that on transfers of thirteen (13) shares of stock of Petitioner as shown below:

Date Transferred	From	To	No. of Shares
12/4/89	O.M. Lopez	A.M. Cornejo	1
12/4/89	O.M. Lopez	B.K. Liboro	1
12/4/89	O.M. Lopez	R.R. Sarmenta	1
12/4/89	O.M. Lopez	L.U. Garde	1
7/16/92	L.U. Garde	R.M. Abello	1
7/16/92	R.R. Sarmenta	T.T. Distrajo	1
7/16/92	C.S. Monsod	F.R. Lopez	1
5/19/93	S.E. Psinakis	A.J. Jison	1
6/17/94	A.M. Cornejo	P.R. Catahan	1
10/17/94	A.J. Jison	J.C. Castro	1
10/21/96	T.T. Distrajo	FPHC	1
3/12/97	J.C. Castro	FPHC	1
			13

at P100.00 par value x
P1.50 DST/P200.00
par value = P9.75

or a total DST of
P187,509.75

Thus, according to Petitioner, it overpaid a total amount of P350,005.00, resulting from the erroneous inclusion of P35,000,000.00 deposit on stock subscription in the computation of subscribed shares of stock and a P5.00 overpayment was due to a mathematical error in computation.

On December 28, 1999, Petitioner filed with the Appellate Division of the BIR a claim for the refund of its erroneously paid DST in the amount of P350,005.00 (Exhibit W). As the two-year prescriptive period was about to lapse, Petitioner filed the instant petition on the following day, December 29, 1999.

In his Answer filed on February 11, 2000, Respondent claimed by way of Special and Affirmative Defenses that:

> "6. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 7. Claims for tax refund, are strictly construed against the taxpayer. Petitioner has no cause of action."

The sole issue brought to the fore is whether or not the P35,000,000.00 deposit on stock subscription should be treated as subscribed shares of stock subject to the payment of documentary stamp tax.

In order for Us to ascertain whether Petitioner's alleged deposit on stock subscription is subject to the payment of DST, We find it necessary to determine first the nature of the said deposit.

According to Petitioner, it is not an original issue of shares of stock nor is it a sale or transfer of shares or certificates of stock contemplated under Sections 175 and 176 of the NIRC, but it is a standard accounting term which refers to an amount of money transmitted by a stockholder to a corporation on deposit with the possibility of the same being later subscribed in the company's capital.

Respondent, however, argues, that the deposit on stock subscription should properly be included in the computation of subscribed shares of stock because the same are already considered issued certificates of stocks.

After carefully examining the records of the case, this Court is convinced that the P35,000,000.00 deposit on stock subscription is not subject to the payment of DST for the following reasons:

First, there is no agreement to subscribe. Section 60 of the Corporation Code defines a subscription contract as "any contract for the acquisition of unissued stock in an existing corporation or a corporation still to be formed." Nowhere in the records can We find any agreement between Petitioner and its stockholders that would lead Us to conclude that a contract for the acquisition of unissued stock amounting to P35,000,000.00 was ever executed in 1997. The Certificates of Stock (Exhibits U to U-22) as well as the Stock and Transfer Book of Petitioner (Exhibit A) which is supposed to keep a record of all stocks in the names of the stockholders, the installments paid and unpaid on all stock subscriptions and the date of payment of any installment, a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made and such other entries as the by-laws my prescribe, showed no subscription contract for 350,000 shares in the amount of P35,000,000.00. Likewise, the General Information Sheets (GIS) submitted by the Petitioner to the SEC from 1990 up to 1998 when the authorized capital stock of Petitioner had already been increased to 750,000 shares valuing P75,000,000.00, out of which 187,500 shares were subscribed and fully paid, failed to disclose such information. Clearly, there is no P35,000,000.00 worth of subscribed capital stock alleged by Respondent to be issued shares subject to DST.

Moreover, the fact that the P35,000,000.00 deposit on stock subscription is not a subscription subject to DST finds support in the January 16, 1997 letter of SEC to Petitioner approving the equity restructuring plan of the latter (Exhibit I). Under the said plan, the deposit on stock subscription to the extent of Petitioner's deficit in the amount of P32,080,595.00 will be treated as additional paid-in capital to be used to wipe out in full its capital deficit. As correctly pointed out by Petitioner, an additional paid-in capital refers merely to the premium over the par value paid by the stockholder(s). There were no shares issued nor any additional subscription involved in the restructuring plan. Verily, Petitioner could not be held liable for the payment of the DST pertaining to the 350,000 shares.

Finally, Respondent offered no proof to support its claim that the 350,000 shares are considered issued certificates of stocks. To Petitioner's Formal Offer of Evidence, he failed to file any comment. When it was his turn to present evidence, he failed to appear for two consecutive trial dates, prompting the Court to consider him to have waived his right to present evidence (page 211, CTA Records). Undeniably, the argument raised by Respondent is an unsubstantiated supposition and is not based on actual findings. Thus, this Court is left with no recourse but to decide the case on the basis of the evidence adduced solely by Petitioner.

WHEREFORE, in view of all the foregoing, the Court finds the instant petition meritorious and in accordance with law. Accordingly, Respondent is hereby **ORDERED** to **REFUND** to Petitioner the amount of P350,005.00, representing erroneously paid documentary stamp tax on December 29, 1997.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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