REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5716

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 2001

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DECISION

This is a judicial claim for refund filed by the Petitioner on January 14, 1999, involving the amount of P180,537.50 representing alleged erroneously paid stock transaction tax for fiscal year 1997.

The facts of the case are simple.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

Records show that on January 14, 1997, Petitioner allegedly sold 288,860 shares of the Bank of the Philippine Islands through its stock broker, ING Baring Securities, Inc.

By reason of the said sale, Petitioner allegedly paid 1/2 of 1% stock transaction tax under Section 124-A of the 1997 National Internal Revenue Code in the amount of P180,537.50. Petitioner alleged that its stock broker, ING Baring Securities, Inc., remitted the aforesaid amount to the Bureau of Internal Revenue when the said broker filed its quarterly percentage tax return on January 26, 1997.

Petitioner opines that the sale of the P288,860 BPI shares is not subject to 1/2 of 1% stock transaction tax inasmuch as it is part of its ordinary dealership transaction, hence, subject to the ordinary corporate income tax of 35%.

Believing as it does that it erroneously paid the stock transaction tax, Petitioner, through its broker/agent ING Baring Securities, Inc. filed with the Bureau of Internal Revenue on November 4, 1997, an administrative claim for refund of the amount of P180,137.50, allegedly representing 1/2 of 1% stock transaction tax (Exhibit "H").

Failing to obtain an affirmative relief from the Respondent Bureau, Petitioner elevated its grievance to this Court on January 14, 1999, via Petition for Review.

In an Amended Answer filed on June 28, 1999, Respondent denied Petitioner's assertions and advances the following Special and Affirmative Defenses, to wit:

> 4. Petitioner's alleged claim for-refund if at all thru ING BARINGS is defective for want of authority of the latter to do so;
>
> 5. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
>
> 6. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);
>
> 7. Taxes are presumed to have been paid and collected in accordance with law.

In its Memorandum filed on July 17, 2000, Petitioner argues that it has sufficiently proved the fact that it has erroneously paid the stock transaction tax as a dealer in securities through its witness and We quote, thus:

"Atty. Interior (Question) Do you know the petitioner, BPI Securities, Inc., in this case?

Answer Yes, ma'am.

Q. How did you come to know about the petitioner, BPI Securities, Inc.?

A. BPI Securities, Inc. is one of the clients of ING Baring, ING Baring as broker for BPI Securities, receives instructions from BPI Securities to sell shares of stocks, particularly BPI shares.

Q. You stated that ING Baring Securities acted as broker for petitioner, BPI Securities, and that ING Baring Securities receives orders from BPI Securities to sell shares of stocks particularly the shares of BPI.
With reference to the year 1997, particularly January 14, 1997, would you recall if ING Baring Securities received instructions from BPI Securities, Inc., to sell shares of stocks particularly BPI shares?

A. Yes, ma'am. On January 14, 1997, ING Barings sold BPI shares for BPI Securities.

Q. How much is that share?

A. On January 14, 1997. ING Barings sold 288,860 shares of BPI.

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Q. Madame witness, you stated that the nature of business of ING Baring Securities, is to act as broker of BPI Securities and other institution, would you know, if ING Baring Securities charged other dealer in securities of stock transaction tax?

A. As our practice and as provided by law, we do not charge dealer securities as(sic) stock transaction tax on the sell(sic) of their shares. However, in this particular case BPI Securities was charged a stock transaction tax of P180,537.50 on the selling of 288, 860 BPI shares.

Q. On the basis of this statement, could you have charged BPI Securities a stock transaction tax in the first place?

A. No, ma'am.

Q. Do you have evidence to prove that the ING Baring as broker and agent of BPI Securities, Inc. paid the said tax to the Bureau of Internal Revenue?

A. Yes, ma'am.

Q. Where is that, Madame witness?

A. I have with me a certified true copy of the Quarterly Percentage Tax Return. (TSN dated October 13, 1999, pages 8, 9, 14 & 15).

Upon the other hand, Respondent asserts that Petitioner's Petition for Review states no cause of action since it failed to allege the legal basis of its petition other than the assertion that 1/2 of 1% stock transaction tax were erroneously paid to the government. Respondent alleged that Petitioner did not even cite explicitly or by implication the pertinent statute and jurisprudence applicable to its cause of action.

Moreover, Respondent advances the view that Petitioner's evidence are wanting in probative value since all its evidence were all certified as true copy of the original by the Petitioner's witness, Elynor Naing, who happens to be the broker/agent of the Petitioner and who is also the one who filed with the Bureau of Internal Revenue the latter claim for refund for and in behalf of the Petitioner, hence, self-serving.

The sole issue in this case is whether or not Petitioner was able to prove, through testimonial and documentary evidence, its entitlement to the refund of alleged erroneously paid stock transaction tax.

After considering the arguments of the parties, evidence at hand and applicable laws on the matter, this Court finds for the Respondent.

As expressly provided under Section 127(A) of the new Tax Code, dealers in securities are not subject to the 1/2 of 1% stock transaction tax imposed on every sale, barter or exchange of shares of stock listed and traded through the local stock exchange, to wit:

> "**Section 127.** ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.*** –
>
> (A) Tax on sale, barter or exchange of shares of stock listed and traded through the local stock exchange.-There shall be levied, assessed, and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed which shall be paid by the seller or transferor." (Underlining supplied)

Likewise, Sections 2, 4 & 5 of Revenue Regulations No. 3-95 as amended by Revenue Regulations No. 5-95, implementing the above provision of the Tax Code clearly state, thus:

> "**Section 2.** ***Definition of Terms.*** – For purposes of these Regulations, the following definitions of words and phrases are hereby adopted:
>
> (a) "Act" – refers to Republic Act No. 7717.
>
> (b) "Closely-held corporation" – means corporation at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.
>
> (c) "Dealer in securities" – means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the business of buying and selling securities for his own account, through a broker

or otherwise, but does not include any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

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Section 4. ***Persons Not Liable to the Tax.*** – The taxes imposed herein shall not apply to the following:

(a) Dealers in securities; and

(b) All other persons, whether natural or juridical, who are specifically exempt from percentage taxes under existing investment incentives and other special laws.

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Section 5. ***Imposition of Tax.*** –

(a) On sales of shares of stock listed and traded through the local stock exchange. – A tax at the rate of:

(1) three-eighths of one percent (3/8 of 1%) for a period of (1) year from May 28, 1994; and

(2) one-half of one percent (1/2 of 1%) thereafter

shall be imposed on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed through the facilities of a local stock exchange." (Underscoring supplied)

Apparently, in order to be entitled to a refund of erroneously paid stock transaction tax, the Petitioner must sufficiently prove the following:

a.) it actually paid and remitted to the BIR the stock transaction tax of P180,537.50;

b.) it is regularly engaged as dealer in securities (as defined in Section 2 of Revenue Regulations No. 3-95); and c.) that the income from the sale of the 288,860 BPI shares formed part of its ordinary income from dealership transactions subjected to the 35% corporate income tax.

While it is true that Petitioner was able to establish the fact that it actually paid P180,537.50 stock transaction tax at 1/2 of 1% based on the gross sales amount of P36,107,800.00 of the 288,860 BPI shares sold by ING Baring Securities (Phils.), Inc. on its behalf as shown in the Contract Note No. 0010280 (Exhs. A to A-5, inclusive) and as testified to by Petitioner's witness, and that the amount of P180,537.50 stock transaction tax was part of P10,681,446.05 total stock transaction tax remitted to the BIR by ING Baring Securities (Phils.), Inc. on January 20, 1997 as evidenced by its quarterly percentage return, Petitioner, however, failed to prove, to the satisfaction of this Court, that it is habitually engaged in the business of buying and selling of securities as defined in Section 2 of Revenue Regulations No. 3-95 and that the income derived from the sale of the 288,860 BPI shares formed part of its ordinary income from dealership transactions subjected to the 35% corporate income tax. To fully substantiate its stance, Petitioner should have presented in evidence, aside from the testimony of its witness, its Articles of Incorporation, financial statements/income tax returns so that this Court would be able to decipher with accuracy that Petitioner is indeed engaged regularly in the business of buying and selling of securities. Non-submission of these documents would result in an inevitable conclusion that Petitioner sold its shares not as part of its regular business but only in an isolated basis, and therefore, not entitled to the exemption from stock transaction tax for dealers in securities provided under Section 124-A(a) of the Tax Code.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

CONCURRING:

ERNESTO D. ACOSTA
Presiding Judge

DISSENTING:

RAMON O. DE VEYRA
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