REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

I-REMIT, INC. (for itself and on behalf of JPSA Global Services, Co., JTKC Equities, Inc. and Surewell Equities, Inc.)
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7993

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 2 3 2011
10:05 a.m.

x- x

DECISION

CASANOVA, J.:

The Petition for Review seeks the refund of the amount of Thirteen Million One Hundred Sixty Thousand Five Hundred Thirty Four and 6/100 Pesos (P13,160,534.06) allegedly representing percentage tax overpaid by Petitioner-I-REMIT, INC. (for itself and on behalf of JPSA Global Services, Co., JTKC Equities, Inc. and Surewell Equities, Inc.)

The following are the undisputed facts, as recited in the parties' Joint Stipulation of Facts and Issues[1] (JSFI), to wit:

> "1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at the 26th Floor, Discovery Centre, ADB Avenue, Ortigas Center, Pasig City. It is licensed to do business in the Philippines and principally engaged in the business

[1] Docket, pp. 75-80

of fund transfer and remittance services, from abroad into the Philippines or otherwise, of any form or kind of currencies or monies, either by electronics, telegraphic, wire or any mode of transfer;

2. Respondent is the Commissioner of Internal Revenue vested with authority to decide, approve, grant tax credit and/or refund of national internal revenue taxes;

3. The Philippine Stock Exchange ("PSE") approved Petitioner's application for the initial listing in the PSE of up to Five Hundred Forty Seven Million Four Hundred Seventeen Thousand (547,417,000) common shares to be offered to the public and an additional Fifteen Million (15,000,000) common shares under its Special Stock Purchase Program (which erroneously included Fifty Thousand (50,000) treasury shares) or a total of Five Hundred Sixty-Two Million Four Hundred Seventeen Thousand (562,417,000) shares (which erroneously included Fifty Thousand (50,000) treasury shares) in a letter dated 28 September 2007, the duplicate copy of which was conformed to by Petitioner, and returned to and received by the PSE on 3 October 2007;

4. On 5 October 2007, the Securities and Exchange Commission approved the registration of Petitioner's Five Hundred Sixty-Two Million Three Hundred Sixty-Seven Thousand (562,367,000) common shares for offer or sale to the public, which represented the total outstanding shares of stock of Petitioner at the time of its initial public offering ("IPO");

5. On 17 October 2007, the shares of stocks of Petitioner were listed on the PSE, out of which One Hundred Forty Million Six Hundred Four Thousand (140,604,000) shares ("IPO shares") were offered to the public by way of the IPO at the offer price of Four and 68/100 (PhP4.68) each share. Of these shares, up to One Hundred Seven Million Four Hundred Seventeen Thousand (107,417,000) common shares were offered to the public by Petitioner I-Remit, Inc. as issuing corporation and up to Thirty Three-Million One Hundred Eighty-Seven Thousand (33,187,000) common shares were offered to the public by Petitioners JPSA Global Services Co., JTKC Equities, Inc. and Surewell Equities, Inc. as selling shareholders;

6. On 19 November 2007, Petitioner paid the percentage tax on the IPO shares in the amount of Twenty Six Million Three Hundred Twenty-One Thousand Sixty-Nine Pesos (PhP26,321,069.00) with the Land Bank of the Philippines, Pasig City Hall branch, an authorized agent bank of the Bureau of Internal Revenue, erroneously using as divisor the figure of Five Hundred Sixty-Two Million Four Hundred Seventeen Thousand (562,417,000) (which included Fifty Thousand (50,000) treasury shares) instead of the correct amount of total outstanding shares of stock of Five Hundred Sixty-Two Million Three Hundred Sixty-Seven Thousand (562,367,000);

7. Petitioner filed a claim for refund under Section 299 of the National Internal Revenue Code ("NIRC") in the amount of Thirteen Million One Hundred Sixty Thousand Five Hundred Thirty-Four and 6/100 Pesos (Php13,160,534.06) on 18 April 2008 with RDO 43 of Pasig City;

8. RDO 43 failed to act on the aforementioned claim for refund;

9. Petitioner filed a claim for refund with Respondent on 11 November 2009 as a result of RDO 43's inaction;

10. Respondent failed to act on Petitioner's claim for refund as of the filing of the Petition for Review on 13 November 2009;

11. Petitioner filed the administrative claim for refund and the Petition for Review within the two-year prescriptive period provided by law for refund of overpaid percentage tax; and,

12. On 26 November 2009, Petitioner received a letter dated 12 November 2009 from RDO 43-A of Pasig City denying Petitioner's application for refund."

In his Answer[2] filed on December 28, 2009, respondent-Commissioner of Internal Revenue (CIR) cites the following Special and Affirmative Defenses, viz.:

"4. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

5. Petitioner's claim for tax refund is subject to administrative investigation/examination by the respondent's Bureau.

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

7. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

8. Finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same *(Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005)*. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. *(Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444)*"

The parties filed their Joint Stipulation of Facts and Issues (JSFI) on March 19, 2010 which was approved by the Court in a Resolution dated March 23, 2010. Petitioner

[2] Docket, pp. 53-56

filed its Memorandum[3] on May 25, 2010 while respondent filed her Memorandum on June 15, 2010[4]. In a Resolution[5] promulgated on June 18, 2010, the instant case was submitted for decision.

The following are the parties' statement of issues[6] for this Court's resolution:

> "1. Whether the percentage tax on IPO of shares should be computed based on the aggregate number of shares issued during the IPO or on the number of shares issued or sold separately by the issuing corporation and/or the selling shareholders during the IPO;
>
> 2. Whether or not the percentage tax rate applicable to the IPO of Petitioner's shares of stock is two percent (2%); and
>
> 3. Whether or not Petitioner is entitled to a tax refund in the amount of Thirteen Million One Hundred Sixty Thousand Five Hundred Thirty-Four and 6/100 Pesos (P13,160,534.06)."

Pertinent to the resolution of this case are Section 127 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 6 of Revenue Regulations No. 6-2008 in relation to Section 2 (q) thereof which are hereunder quoted for reference:

> "SEC. 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) xxx xxx xxx
>
> (B) *Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering.*- There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of shares of stocks in **closely held corporations**, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty five percent (25%)	4%
Over twenty five percent (25%) but not over thirty-three and one-third percent (33 1/3%)	2%

[3] Docket, pp. 97-113
[4] Docket, pp. 118-129
[5] Docket, p. 130
[6] JSFI, Docket, p. 78

Over thirty-three and one-third percent (33 1/3%) 1%

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

For purposes of this Section, the term *'closely held corporation'* means any corporation at least fifty percent (50%) in value of 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.

For purposes of determining whether the corporation is a closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

(1) *Stock Not Owned by Individuals*.- Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.

(2) *Family and Partnership Ownerships*.- An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family, or by or for his partner. For purposes of the paragraph, the *family of an individual* includes only his brothers and sisters (whether by whole or half blood), spouse, ancestors and lineal descendants.

(3) *Option.*- If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option and each one of a series of options shall be considered as an option to acquire such stock.

(4) *Constructive Ownership as Actual Ownership.*- Stock constructively owned by reason of the application of paragraph (1) or (3) hereof shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by the individual by reason of the application of paragraph (2) hereof shall not be treated as owned by him for purposes of again applying such paragraph in order to make another constructive owner of such stock.

(C) xxx xxx xxx
(D) xxx xxx xxx."

"SECTION 6. *Sale, Barter or Exchange, or Issuance of Shares of Stock Through IPO.* — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering (IPO) of shares of stock in **closely held corporations**, as defined in Sec. 2 (q) hereof, under the following rules:

(a) *Tax Rates.* — A tax at the rates provided hereunder shall be imposed based on subsection (b) hereof in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the Local Stock Exchange:

Proportion of Disposed Shares to Outstanding Shares	*Tax Rate*
Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty three and one-third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

(b) *Tax Base.* — Gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed of.

(c) *Determination of the Persons Liable to Pay the Tax.* —
(c.1) *Primary Offering.* — The tax herein imposed shall be paid by the issuer corporation with respect to the Shares of Stock corresponding to the Primary Offering.

(c.2) *Secondary Offering.* — The tax herein imposed shall be paid by the selling shareholder(s) with respect to the Shares of Stock corresponding to the Secondary Offering.

(c.3) *Illustration.* — RFB Corporation, a closely-held corporation, has an authorized capital stock of 100,000,000 shares with par value of Php1.00/share as of January 1, 2008.

Of the 100,000,000 authorized shares, 25,000,000 thereof is subscribed and fully paid up by the following stockholders:

Mr. Estoy B. Zabala	5,000,000
Mrs. Rowena V. Posadas	5,000,000
Mr. Conrado G. Cruz	5,000,000
Mr. Benedict O. Sison	5,000,000
Mrs. Linda O. Evangelista	5,000,000
Total Shares Outstanding	25,000,000

RFB Corporation finally decides to conduct an IPO and initially offers 25,000,000 of its unissued shares to the investing public. After the IPO in March 2008, RFB Corporation's total issued shares increased from 25,000,000 to 50,000,000 shares.

At the IPO, one of the existing stockholders, Mrs. Linda O. Evangelista, has likewise decided to sell her entire 5,000,000 shares to the public. Thus, 25,000,000 shares have been offered in the primary offering and 5,000,000 shares in the secondary offering.

Computation of the percentage to be used. —

(i) Total Number of Shares Outstanding

Number of Shares issued by RFB prior to IPO	25,000,000 shares
Add: Number of Additional Shares Through Primary Offering for IPO	25,000,000 shares

Total Shares Outstanding after Listing at the Stock Exchange or IPO	50,000,000 shares

(ii) Computation of Percentage Ratio to the Total Outstanding Shares

(ii.a) For Primary Offering:

Number of Shares offered by RFB Corporation to the public	25,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	50%

Percentage Ratio is 50% which is over 33 1/3% so the Rate of Tax to be used for Primary Offering (IPO) of shares is 1%.

(ii.b) For Secondary Offering:

Number of Shares offered by existing Stockholder of RFB Corporation to the public	5,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	10%

Percentage Ratio is 10% which is under 25% so the Rate of Tax to be used for Secondary Offering (IPO) of shares is 4%.

(iii) Computation of the Tax

(iii.a) RFB Corporation newly issued shares (25,000,000 shares x Php1.50/share x 1%)	=	Php375,000
(iii.b) Mrs. Linda O. Evangelista's shares (5,000,000 shares x Php1.50/share x 4%)	=	Php300,000

If in June 2008, RFB Corporation again decides to increase capitalization by offering another 30,000,000 of unissued shares to the public at Php2.00/share consequently bringing the total issued shares to 80,000,000 shares, such follow-on/follow-through sale which are shares issued subsequent to IPO shall no longer be taxed pursuant to Section 6 hereof. The transaction, however, is subject to Documentary Stamp Tax similar to the transaction covered by Primary Offering as well as Secondary Offering of shares of stock.

Nonetheless, in case another existing shareholder decides to offer his existing shares to the public subsequent to IPO, as in the above illustration, if Mr. Benedict O. Sison ever decides to sell his 5,000,000 shares to the public at Php2.00 per share (for the Php10,000,000 he received as consideration for the shares he sold), he shall be taxed pursuant to Section 127 (A) of the Tax Code as implemented by Sec. 5 of these Regulations which is 1/2 of 1% of the gross selling price or PhpP50,000 (i.e., 5,000,000 shares x Php2.00/share = Php10,000,000 x 1/2 of 1%)."

"SECTION 2. *Definition of Terms.* — For purposes of these Regulations, the following definitions of words and phrases are hereby adopted:

(a) xxx xxx xxx

(q) *'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.

Rules in Determining Whether the Corporation is a Closely-Held Corporation insofar as such Determination is based on Stock Ownership:

(q.1) *Stock not owned by individuals.* — Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(q.2) *Family and partnership ownerships.* — An individual shall be considered as owning the stock owned, directly or indirectly, by or for family, or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(q.3) *Option.* — If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option and each one of a series of options shall be considered as an option to acquire such stock.

(q.4) *Constructive ownership as actual ownership.* — Stock constructively-owned by reason of the application of paragraph (q.1) or (q.3) shall, for purposes of applying paragraph (q.1) or (q.2), be treated as actually owned by such person; but stock constructively owned by the individual by reason of the application of paragraph (q.2) hereof shall not be treated as owned by him for purposes of again applying such paragraph in order to make another constructive owner of such stock.

(r) xxx xxx xxx"

Based on the above-quoted provisions, the tax rate shall be computed based on the proportion of shares of stock sold, bartered or exchanged to the outstanding shares of stock after the listing in the local stock exchange. Petitioner argues that it is entitled to a refund because it erroneously used the tax rate of four percent (4%) and the consequent payment of Twenty Six Million Three Hundred Twenty One Thousand Sixty Nine Pesos (P26,321,069.00) resulted in the overpayment of Thirteen Million One Hundred Sixty Thousand Five Hundred Thirty Four and 6/100 Pesos (P13,160,534.06).

In arriving at the tax rate of 4%, petitioner divided its 140,604,000 IPO shares (107,417,000 unissued common shares offered to the public as "Primary Shares" plus 33,187,000 common shares offered to the public as "Secondary Shares" by JPSA Global Services, Co., JTKC Equities, Inc. and Surewell Equities, Inc.) over the 562,417,000 shares (which erroneously included Fifty Thousand [50,000] treasury shares), which resulted in 25% and a consequent tax rate of 4%. Excluding the treasury shares, petitioner contends that the quotient would be 25.0022% thus, resulting in a lower tax rate for IPO percentage tax of 2% under Section 127 (B) of the NIRC.

The Court partly agrees with the petitioner.

As correctly alleged by the petitioner, it erroneously used 562,417,000 shares as its divisor in computing the IPO tax rate. The treasury shares at the time of the listing of the shares of petitioner at the PSE, amounting to 50,000 shares, should be excluded in petitioner's total outstanding capital stock. In computing the IPO tax rate, petitioner should have used 562,367,000 shares as its divisor.

This, notwithstanding, the Court cannot grant petitioner's claim for refund in the total amount of Thirteen Million One Hundred Sixty Thousand Five Hundred Thirty Four and 6/100 Pesos allegedly representing percentage tax overpaid by petitioner for shares listed and traded on the PSE.

Petitioner alleges that in determining the tax rate to be used, Section 127 of the NIRC does not distinguish whether the shares of stocks sold or otherwise disposed of is covered by primary or secondary offering. The law is clear that the tax rate shall depend on the proportion of shares of stock sold, bartered or exchanged to the total outstanding shares of stock after listing, or based on the following formula: shares of stock sold, bartered or otherwise disposed divided by the total outstanding shares of stock after the listing in the local stock exchange. While the law provides a distinction on who shall pay the IPO tax (i.e., issuing corporation in 'primary offering' and selling shareholder in ' secondary offering'), it does not provide for separate computations for the taxes to be paid and the tax rates to be used for each type of taxpayer or 'offering' during the same IPO. Thus, a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used.

Respondent, on the other hand, argues that the percentage tax on the IPO of shares of stock should be computed based on the number of shares issued or sold separately by the issuing corporation and/or the selling shareholders during the IPO. Section 6 (c.3) of Revenue Regulations (RR) No. 6-2008 provided an illustration on how to compute the percentage tax on the shares issued or sold separately by the issuing corporation and/or the selling shareholders. In addition, petitioner's IPO of its shares of stock does not fall under the provisions of Section 127 (B) of the 1997 Tax Code and Section 6 of RR No. 6-2008.

The Court finds it imperative for the corporation issuing its shares of stock in an IPO to prove that it is a closely held corporation before it can qualify under Section 127 (B) of the NIRC. In this regard, petitioner failed to show proof that it is a closely held corporation, thus, its petition must fail.

To stress, tax refunds are in the nature of tax exemptions. The same are regarded as in derogation of sovereign authority and shall be construed *strictissimi juris* against the person claiming such exemption. The taxpayer has the burden of proving that it is entitled to the claim for refund[7].

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

[7] BPI-Family Savings Bank v. Court of Appeals, 330 SCRA 507 (2000).

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice