REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLI PROPERTIES INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5578

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 10 1999

x - x

DECISION

This case involves a claim for refund of value-added tax in the amount of P381,810.01 alleged to be erroneously paid by the Petitioner for the period January 1996 to August 1997.

Petitioner is a domestic corporation with principal office at 2F, Stone Treatment Center, Saint Luke's Medical Center, Quezon City. It is a registered owner of a parcel of land with improvements located at the Light Industry and Science Park in Cabuyao, Laguna (Exh. C).

By virtue of a Contract of Lease (Exh. D), Petitioner leased out its property to USA Laboratories, Inc. effective October 15, 1993 for the amount of P181,338.00 each month for the first two years subject to 10% increase every two years.

Petitioner filed its 1996 Corporate Annual Income Tax Return on April 4, 1997 declaring a taxable income of P1,333,193.00 and a tax payable in the sum of P101,934.47.

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For the period January 1996 to August 1997, Petitioner's lessee allegedy failed to pay the agreed rentals. But despite non-receipt of rental income, petitioner still paid the value-added tax (VAT) thereon totalling P381,810.01, detailed as follows:

MONTH	AMOUNT	EXHIBIT
January 1996	P 9,973.59	I
February 1996	19,947.18	J
March 1996	19,947.18	
April 1996	19,947.18	L
May 1996	19,947.18	M
June 1996	19,947.18	
July 1996	19,947.18	O
August 1996	19,947.18	P
September 1996	19,947.18	
October 1996	19,947.18	R
November 1996	19,947.18	S
December 1996	19,947.18	
SUB-TOTAL	P222,232.57	
January 1997	P 19,947.18	U
February 1997	19,947.18	V
March 1997	19,947.18	
April 1997	19,947.18	X
May 1997	19,947.18	Y
June 1997	19,947.18	
July 1997	19,947.18	AA
August 1997	19,947.18	BB
SUB-TOTAL	P159,577.44	
GRAND TOTAL	P381,810.01	

Thus, on November 25, 1997, Petitioner filed with the Revenue District Office No. 39 a claim for refund (Exh. EE) in the amount of P381,810.01 representing erroneously paid VAT from January 1996 to August 1997.

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Claiming inaction on the part of the respondent and to toll the running of the prescriptive period, judicial remedy was sought before Us on February 23, 1998.

Respondent, by way of Special and Affirmative Defenses, states:

1) 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; and

2) Claims for tax refunds are strictly construed against the taxpayer. Petitioner has no cause of action.

In support of its claim, petitioner presented documentary as well as testimonial evidence.

Respondent, on the other hand, was considered to have waived his right to present evidence in view of the repeated absence of his counsel (CTA rec., p. 205).

The lone issue to be resolved in this case is whether or not Petitioner is entitled to a refund of P381,810.01 representing erroneous VAT payments for the period January 1996 to August 1997.

After an assiduous review of the facts, law and evidence before Us, We rule against the Petitioner.

Section 102 of Republic Act No. 7716, otherwise known as the Expanded Value-Added Tax Law, as amended by Republic Act No. 8241, provides, to wit:

> SEC. 102. *Valued-added tax on sale of services and use or lease of properties. - (a) Rate and base of tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
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> xxx xxx xxx
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> Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

Based on the above provision, Petitioner as lessor, is required to pay the 10% VAT on rentals. Petitioner submitted the VAT returns afore-enumerated as proofs of payments thereof.

As adverted to earlier, Petitioner claimed that from January 1996 to August 1997, it did not receive any rental payments from its lessee, USA Laboraties, Inc.. However, the 1996 income tax return of petitioner showed a net income of P1,333,193.00 and a tax payable in the amount of P101,934.47. In said tax return, Petitioner's gross income was solely derived from rentals. Why did Petitioner declare the same as income? Even if

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Petitioner was on accrual method and assuming that its accounting staff were not familiar with the VAT Law, still, adjustments/reconciliation are supposedly made at the end of each year. Hence, the mistake which Petitioner allegedly committed could have been corrected before the filing of its income tax return on April 4, 1996. In other words, why repeat the same mistake in the following year?

Petitioner also asserted that USA Laboraties, Inc. admitted in its letter (Exh. CC), that it owed Petitioner rental arrearages. But an examination of the said document will not tell us that said arrearages covered the period subject of this case. In fact, even the letter sent by Petitioner's counsel dated July 31, 1997 (Exh. E) informing the lessee of the termination of the lease contract effective August 15, 1997 did not specify that the unpaid rentals were from January 1996 to August 1997.

Thus, We cannot accept Petitioner's evidence as sufficient proof that indeed it did not receive the rental income during the period involved in this case. And it is worthy to note that Petitioner even submitted a Certificate of Creditable Taxes Withheld at Source (CTA

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rec., p. 197) for the period January to December 1996 issued by USA Laboratories, Inc.. This presupposes payment on the part of the latter in the amount of P2,393,661.60, the same amount declared by herein Petitioner in its 1996 income tax return as rental income, from which payment, a tax was withheld in the amount of P119,683.00. It somehow defies logic why USA Laboratories, Inc. withheld a tax from an income which it supposedly had not paid. Furthermore, why issue the corresponding certificate and why did Petitioner bother to attach the same in the income tax return?

It seems that it is not only the Petitioner's accounting staff who were confused but its counsel as well. Because if the allegation is non-receipt of income then why the declaration of income in the tax return? Worse, how come there was a certificate of creditable taxes withheld at source? Even the letters which Petitioner alleged as demand letters were not demand letters at all but a termination letter (Exh. E) which did not specify the period covering non-payment of rentals and a letter (Exh. DD) transmitting accountabilities. Although the latter mentioned of the period covered, yet We wonder why the attachment referred thereto could not be found.

It is worth stressing also that this claim includes the period January to August 1997. Yet Petitioner failed to submit the 1997 income tax return which is necessary in verifying Petitioner's financial standing in 1997. Moreover, the journal entry submitted by the Petitioner was not given any weight as evidence for it is only for the month of February 1996. And as We intimated earlier, even if the accrual method of accounting was being adopted by the Petitioner, it had to make the year end adjustment. The inadvertence it so insisted to have committed could have been realized and rectified before the 1996 income tax return was filed. So, it could not be plausible that in 1997, after realizing its ignorance or mistake, it continued to pay the VAT despite the non-receipt of rental, if ever.

In sum, We really have no way of determining if indeed Petitioner's lessee failed to pay its monthly rentals as averred. Or whether subsequently lessee's situation had finally improved thereby fulfilling its promise to settle its accounts.

WHEREFORE, finding no solid proof that the VAT in the amount of P381,810.01 was erroneously paid by

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Petitioner, We are constrained to DISMISS the instant Petition for Review for lack of merit.

SO ORDERED

AMANCIO Q. SAGA
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, Artice VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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