**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 5572

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 25 2000

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# DECISION

This is a judicial action instituted by the Petitioner as employer and withholding agent for the recovery of overpaid withholding taxes on separation pay of its separated employees due to redundancy for the period December 1995.

Petitioner is a domestic corporation principally engaged in telecommunication.

For taxable year 1995, Petitioner implemented a redundancy program whereby rank and file, supervisory and executive employees were terminated from their employment brought about by (a) technological changes, (b) decrease in workload, (c) transfer of toll equipment and operations to other areas and decrease in volume of operator-handled calls and (d) process changes or reorganization whereby functions of employees are absorbed by other employees (Exh. C, TSN May 20. 1998).

Petitioner allegedly paid said terminated employees separation pay and other benefits as accumulated vacation and sick leave credits in December 1995.

On January 25, 1996, Petitioner filed its Monthly Remittance Return of Income Taxes Withheld for December 1995 (Exh. D) declaring withholding taxes on compensation in the amount of P120,524,926.44 from which the withholding taxes on separation pay in the sum of P23,706,908.20 formed a part of (TSN, Sept. 1, 1998, p. 14).

Realizing that the separation pay and other benefits received by its employees as a consequence of redundancy program are exempt from income and withholding taxes pursuant to Section 28(b)(7)(B) of the then Tax Code and BIR Ruling No. 197-92, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on November 20, 1997 in the total amount of P23,706,908.20 (Exh. A) broken down as follows:

| | |
|---|---|
| Rank and File | P 9,491,008.85 |
| Supervisory | 10,958,222.84 |
| Executive | 3,257,676.51 |
| TOTAL | P23,706,908.20 |

Claiming inaction on the part of the Respondent and to toll the running of the prescriptive period, the instant petition was filed on January 6, 1998.

In answer to the Petition for Review, Respondent had these Special and Affirmative Defenses:

> 1) The petition states no cause of action as it does not allege the date/s when the tax sought to be refunded/credited was/were actually paid;
>
> 2) The best evidence of payments and remittances of the alleged taxes withheld are the official receipts which are however not visible in this case;
>
> 3) In claiming for tax refund or issuance of tax credit certificate, it is incumbent upon the Petitioner to prove that it is entitled to it and must be able to point positively provision/s of law granting such right, otherwise, failure to do so is fatal on its said claim;
>
> 4) Claims for refund of taxes such as the herein petition are construed strictly against claimants, the same being in the nature of exemption from taxes;
>
> 5) It is incumbent upon Petitioner to show full compliance to the provisions of Section 230 of the Tax Code, as amended; and
>
> 6) Consequently, therefore, Petitioner is not entitled to the claim herein sought to be refunded or credited.

On March 19, 1998, however, Petitioner manifested that it is withdrawing from the original claim of P23,706,980.20, the sum of P16,439,777.16 overpaid withholding taxes of separated employees who preferred to personally file their respective claims with the BIR (CTA rec., p. 47). Thus, only the amount of P6,747,980.78 remains as the subject of the present petition. But this amount is reduced to P6,679,167.72 based on the revised certification dated November 26, 1998 (Exh. E), computed as follows:

| | |
|---|---|
| Rank and file | P3,000,295.01 |
| Supervisors and staff | 2,983,680.48 |
| Executives | 695,192.23 |
| Grand Total | P6,679,167.72 |

The sole issue to be resolved in this case is whether or not Petitioner is entitled to the refund/tax credit of overpaid withholding taxes on the separation pay of its employees due to redundancy in the amount of P6,679,167.72.

We rule in the negative.

Separation pay due to redundancy is exempt from withholding taxes as clearly provided for under Section 28(b)(7)(B) of the then Tax Code, to wit:

> SECTION 28. Gross Income. xxx
>
> (b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> xxx xxx xxx
>
> (7) *Retirement benefits, pensions, gratuities, etc.* - xxx
>
> (B) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee. (Underscoring supplied.)

Corollary thereto, BIR Ruling No. 197-92, dated July 3, 1992, is hereunder partly quoted:

> "Any amount received by an official or employee or his heirs from his employer as a consequence of separation by such official or employee from the service of the employer due to death, sickness or physical disability or for any

> cause beyond the control of said official or employee is exempt from taxes regardless of age or length of service. The phrase `for any cause beyond the control of said official or employee' connotes involuntariness on the part of the official or employee and must not be asked for or initiated by him." (Emphasis Ours.)

This "tax-exempt status" of separation benefits is further affirmed by BIR Ruling No. UN-010-96, dated January 4, 1996 (Exh. C).

Prescinding from the above law and rulings, in order to qualify for an exemption from income taxes, the official or employee must be actually separated from the service for any of the causes aforementioned and the official or employee receives separation pay or benefits from the employer as a consequence of such separation. It follows therefore, that in order to be entitled to a claim for refund of overpaid or erroneously paid withholding taxes on separation pay, Petitioner must prove that:

(1) its employees were actually separated from employment due to causes beyond their control;

(2) its employees actually received separation pay and other benefits as a consequence of such involuntary separation;

(3) it actually withheld income taxes on the employees' separation pay/other benefits; and

(4) it actually remitted to the BIR the withholding taxes on the employees' separation pay/other benefits.

In the case at bar, it is undisputably established that Petitioner's acquisition of new equipment as well as the technological changes adopted in its operation resulted to redundancy in several job functions/positions which necessitated the reduction of its manpower. In short, the separation from the service of Petitioner's employees was due to causes beyond their control.

However, Petitioner failed to sufficiently prove that the terminated employees received separation pay and that taxes were withheld therefrom and remitted to the BIR.

To prove actual payment of the separation pay/other benefits and the withholding of the corresponding income taxes as indicated in the revised lists of redundant employees, Petitioner submitted compilations of cash salary vouchers for the final payment/terminal pay of its redundant employees (Exhs. E-8 & E-9, inclusive).

The cash salary vouchers for redundant supervisors and staff and executive employees' final pay (Exh. E-9) disclose that the corresponding income taxes on their separation pay/other benefits were deducted and that the final amounts indicated in the cash salary vouchers were net of the income taxes deducted. The said final separation pay/other benefits net of withholding taxes were duly received by the redundant supervisors and staff and executive employees with the exception of a few said employees, as shown by their signatures on the cash salary vouchers acknowledging actual receipt of payments.

With respect to the redundant rank and file employees' final payment/terminal pay (Exh. E-8), the cash salary vouchers relative thereto have no payment acknowledgment receipts. Inasmuch as these cash vouchers were not signed by the respective employees to prove actual receipt of payment, the same merely serve as proofs of authorization for payment and not actual payment by the Petitioner of the redundant rank and file employees' separation pay and other benefits. In other words, Petitioner failed to prove that the rank and file employees were actually paid separation pay and other benefits.

To establish that the withholding taxes deducted from the redundant employees' separation pay/other benefits were actually remitted to the BIR, herein Petitioner submitted the following:

| | | Exhibit |
|---|---|---|
| a) | Monthly Remittance Return of Income Taxes Withheld for December 1995 | D |
| b) | Revised SGV & Co. Certification | E to E-3-d |
| c) | Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1995 | E-6 |
| d) | Summary of Income Taxes Withheld for the calendar year ended December 31, 1995 | E-6-a |
| e) | Summary of Gross Compensation and Tax Withheld | E-6-b to E-6-e |

However, it cannot be determined from the above documents whether or not Petitioner actually remitted the total income taxes withheld from the redundant employees' taxable compensation (inclusive of the separation pay/other benefits) for the year 1995. The amounts of total income taxes withheld for each redundant employee as reflected in the revised lists of redundant employees (Exhs. E-4, E-5, E-7, inclusive) cannot be verified against the "Summary of Gross Compensation and Tax Withheld for 1995" (Exhs. E-6-b to E-6-e, inclusive) due to the fact that this summary enumerates the amounts of income taxes withheld from Petitioner's employees on per district/area basis. The only schedule (with names, corresponding gross compensation and withholding taxes) attached to the summary was for the withholding taxes on service terminal pay (Exh. E-6-e). However, the names listed thereon were not among the names of the redundant separated employees being claimed by petitioner.

Furthermore, a mere certification from SGV & Co. that the remittances of said withholding taxes of redundant employees have been verified against Petitioner's Alphabetical List of Employees from Whom Taxes Were Withheld for the year 1995 and traced to Monthly Remittance Returns of Income Taxes Withheld is not sufficient because We have no way of ascertaining the correctness of the said SGV findings. The Alphabetical List of Employees from Whom Taxes Were Withheld for the year 1995 and the Monthly Remittance Returns of Income Taxes Withheld referred to by independent CPA were not submitted to the Court for verification.

It should be emphasized that under CTA Circular 1-95, as amended, Petitioner is directed to submit to the Court all the voluminous documents examined by the independent CPA duly pre-marked which Petitioner failed to do.

It is worthy to note that Respondent presented a witness in the person of Atty. Rodolfo L. Salazar, Chief of the BIR Appellate Division, who testified that a portion of Petitioner's original claim for refund of P23,706,908.20 had already been granted. He also testified that out of 769 claimants, who opted to file directly with the BIR, 766 had been processed and granted. In fact, the three claims were not processed because the concerned taxpayer failed to submit the income tax returns and withholding tax certificates. Considering that no documentary evidence was presented to bolster said testimony, We have no means of counter checking whether the 766 claims alleged to have been already granted by the Respondent pertained to the P16,439,777.61 claim for refund withdrawn by the Petitioner from the instant petition or to the remaining balance of P6,679,167.72 which is the subject of this claim.

**WHEREFORE,** in view of the foregoing, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**RAMON O. DE VEYRA**
Associate 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