REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

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METROPOLITAN BANK AND TRUST COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 340
(C.T.A. CASE No. 6765)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 2 1 2008

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a "Petition for Partial Review" filed by Metropolitan Bank and Trust Company (hereafter "petitioner"), *under Section11 of RA No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals),* in relation *to Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks reconsideration and setting aside of the Resolution dated

November 14, 2007, insofar as the ruling declaring petitioner's claim for refund on the double payment it made on the Final Tax of Luzon Hydro Corporation's ("LHC") interest payment for the month of March 2001 amounting to P3,060,029.24 as having prescribed, rendered by the First Division of this Court, in CTA Case No. 6765, entitled "Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue".

THE FACTS

The antecedent facts, as summarized by the First Division of this Court, are hereunder adopted to wit:

> "Petitioner, Metropolitan Bank and Trust Company ('Metrobank'), is a universal banking corporation duly organized and existing under the laws of the Philippines with principal address at Metrobank Plaza Building, Sen. Gil J. Puyat Avenue Extension, Makati City.
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> Respondent is the duly appointed Commissioner of Internal Revenue ('Commissioner') with the authority among others, to decide, approve and grant tax credit and/or refund and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.
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> On June 5, 1997, Solidbank Corporation, together with other local and foreign banks forged an Omnibus Agreement ('Agreement') with Luzon Hydro Corporation or LHC. Pursuant to the Agreement, Solidbank extended a foreign currency denominated loan with the principal amount of US$123,780,000.00 with LHC as borrower. The

Agreement also provides, specifically under Section 9.01 thereof, that the borrower will shoulder all the corresponding internal revenue taxes required by law to be deducted or withheld on the said loan, as well as the filing of the tax returns thereof and remittance of the taxes withheld to respondent Bureau of Internal Revenue ('BIR').

On September 1, 2000, petitioner-Metrobank became the successor-in-interest of Solidbank Corporation, per Bangko Sentral ng Pilipinas Resolution 1282.

Alleged First Remittance done by LHC

On March 2, 2001, LHC allegedly paid Metrobank a total of US$1,538,122.17 which was composed of the amounts of US$902,545.47 as principal and US$635,576.70, as interest evidenced by Debit Ticket No. 5511264.

In compliance with the Agreement, LHC allegedly paid and remitted the 10% Final Tax on said interest amounting to US$63,106.40 with peso equivalent of P3,060,029.24. As proof of remittance and payment, petitioner presented as its evidence, LHC's Schedule of Final Tax for March 2001, Monthly Remittance Return for March 2001 (BIR Form 1601-F) and Philippine National Bank debit memo dated April 10, 2001.

On October 31, 2001, LHC allegedly again paid Metrobank a total of US$1,333,268.31 composed of the amounts of US$902,545.45 as principal and US$430,722.86, as interest evidenced by Debit Ticket No. 0169653.

LHC allegedly paid and remitted to BIR the 10% Final Tax on said interest amounting to US$43,072.29 with peso equivalent of P2,236,743.81. As proof of remittance and payment, petitioner presented as its evidence, LHC's Schedule of Final Tax for October 2001, Monthly Remittance Return for October 2001 (BIR Form 1601-F) and Philippine National Bank debit memo, dated November 12, 2001.

In sum, the alleged total 10% Final Tax on such FCDU interest payments in US dollars is US$106,178.69 (US$63,106.40 for March + US$43,072.29 for October). The peso equivalent of the above mentioned remittances of 10% Final Tax on FCDU is P5,296,773.05 (P3,060,029.24 for March + P2,236,743.81 for October).

Alleged Second Remittance done by Petitioner-Metrobank

Metrobank, however, allegedly remitted to the BIR the same final withholding taxes when it inadvertently included the foreign currency denominated interest income of US$631,063.98 for March 2001 and US$430,722.86 for October 2001 (or a total of US$1,061,786.84) in its Monthly Remittance Returns of Final Income Taxes Withheld for the said months.

On December 27, 2002, due to the alleged double remittance of P5,296,773.05 representing 10% Final Tax on foreign currency transactions, Metrobank filed with the BIR a letter requesting for the refund thereof."

On September 10, 2003, in view of respondent's inaction, petitioner elevated its case to this Court by way of Petition for Review, docketed as C.T.A. Case No. 6765. awl

In his Answer, respondent alleged by way of special and affirmative defenses, that the claim for refund is subject to administrative investigation by the BIR; that petitioner must prove that there was double payment of the tax sought to be refunded; that the claim for refund must have been filed within the prescriptive period, in accordance with *Section 229 of the NIRC of 1997, as amended*; that in an action for refund, the burden of proof is on the taxpayer to establish its right to a refund and failure to sustain the burden is fatal, and that claims for refund are construed strictly against the claimant for the same partake of the nature of tax exemption.

After trial on the merits, on August 13, 2007, the First Division of this Court rendered a decision denying the Petition for Review.

Not satisfied, petitioner moved for a reconsideration of the decision, which the First Division partially granted in its Resolution dated November 14, 2007 allowing petitioner to present additional evidence only with regard to its claim for refund of the 10% final withholding tax for the month of October 2001 amounting to P2,236,743.81, but denying petitioner's claim for refund of the 10% final withholding tax for the month of March 2001 amounting to P3,060,029.24 .

Hence, the instant "Petition for Partial Review" raising the following:

ISSUE

WHETHER OR NOT THE FIRST DIVISION OF THE HONORABLE COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN DENYING METROBANK'S CLAIM FOR TAX REFUND AND/OR TAX CREDIT IN THE AMOUNT OF PHP3,060,029.04 FOR ITS APRIL 2001 DOUBLE PAYMENT OF LHC'S 10% FINAL TAX ON INTEREST INCOME ON THE GROUND OF PRESCRIPTION.

Without necessarily giving due course to the "Petition for Partial Review", on January 15, 2008, We ordered the respondent to file her comment on the petition.

On January 30, 2008, respondent filed her Comment, hence, the case was deemed submitted for decision.

Petitioner's Arguments

Petitioner argues that the two-year prescriptive period within which it should file an administrative and/or judicial claim for tax refund/tax credit expired on April 2004 and not on April 25, 2003 or November 12, 2003, as contained in the Decision dated August 13, 2007 and Resolution dated November 14, 2007 since petitioner's Annual Income Tax Return for 2001 was filed in April 2002; that the Petition for Review filed on September 10, 2003, which involves the claim of petitioner to recover the erroneous payments it made in April and November 2001, is within the period allowed by law and not barred by prescription.

Respondent CIR's Counter-Arguments

Respondent, on the other hand, counter-argues that this Court did not err when it ruled that petitioner's claim for refund/credit for its March 2001 payment of LHC's 10% Final Tax on interest income has already prescribed, since the 10% Final Tax on interest for the month of March amounting to P3,060,029.24 was remitted by petitioner on April 25, 2001; therefore applying the two-year requirements provided in *Sections 204 and 209 of the NIRC of 1997, as amended*, and counting two years from April 25, 2001, petitioner has until April 25, 2003, within which to file its claim for refund for both administrative and judicial levels. Here, the Petition For Review was filed only on September 10, 2003, which is clearly way beyond the April 25, 2003 deadline. Therefore, petitioner's claim pertaining to March 2001 in the amount of P3,060,029.24 was already barred by prescription.

THE COURT EN BANC'S RULING

The Petition has no merit.

Both the Administrative and Judicial Claims For Refund of Erroneously Collected Tax Should Be Made Within Two Years from the Date of Payment of the Tax Under Sections 204 And 229 of the NIRC of 1997, as Amended

Sections 204 and *229 of the NIRC of 1997, as amended*, provide the period for filing of claim for credit or refund of erroneously or illegally collected tax, to wit:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –
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> xxx xxx.
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be

allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. xxx."

"SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Pursuant to the aforequoted *Sections 204 and 229 of the NIRC of 1997, as amended*, the administrative and judicial claims for refund or credit should be filed within two years from the date of payment of the tax.

In the instant case, petitioner's claim for refund pertains to its alleged double payment as a withholding agent of the 10% final withholding tax arising from its FCDU transactions for the month of March 2001 amounting to P3,060,029.24.

A perusal of petitioner's Monthly Remittance of Final Income Tax Withheld (BIR form 1601-F) shows that the final tax amounting to P3,060,029.24 was remitted by petitioner on April 25, 2001.

Applying *Sections 204 and 229 of the NIRC of 1997, as amended*, petitioner has two years from April 25, 2001, or until April 25, 2003, within which to file its administrative and judicial claims for refund. Here, although petitioner filed the administrative claim on December 27, 2002, however, its Petition for Review was filed with this Court only on September 10, 2003, which is more than four months way beyond the two-year prescriptive period. Hence, petitioner's claim for refund of the alleged double payment of the 10% final withholding tax for March 2001 amounting to P3,060,029.24 had already prescribed.

Petitioner's contention that the two-year prescriptive period should be reckoned from the date when the final adjustment return is filed, citing

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the cases of *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957, Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184, Commissioner of Internal Revenue vs. Philippine American Life Co., 244 SCRA 446, and Commissioner of Internal Revenue vs. Court of Appeals, 301 SCRA 435,* is without merit. The said cases involve claims for refund of corporate income tax, logically, it is only upon the filing of the Adjustment Return or Annual Income Tax Return that it can be determined whether there has been an overpayment by the taxpayer, considering that under the *NIRC of 1997, as amended*, the corporation is explicitly required to file final adjustment return.

On the other hand, the case at bench involves a claim for refund of final withholding tax. Under the final withholding tax system, the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income *(Section 2.57, Revenue Regulations 02-98)*. Considering that petitioner filed the "Monthly Remittance Return of Final Income Taxes Withheld" and paid the 10% final withholding tax on FCDU for the month of March 2001 on April 25, 2001, it is on the same date that petitioner is deemed to

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have fully and finally paid said final withholding tax. Accordingly, applying the provisions of *Sections 204 and 229 of the NIRC of 1997, as amended*, petitioner has until April 25, 2003 within which to file its claim for refund.

As aptly ruled by the First Division of this Court:

> "Petitioner's argument is misplaced when it stated that the two-year period of prescription should be 'computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return'. Petitioner should take note that this rule applies to its corporate annual income taxes and not on its final taxes.
>
> It is very clear that this case involves a claim for refund of 10% Final Withholding Tax on FCDU loan in the amount of P3,060,029.24 for the month of March 2001 and not petitioner's annual corporate income taxes. Applicable here is Revenue Regulations No. 2-98, as amended.
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> Sec. 2.57 (A) of Revenue Regulations No. 2-98 explains the nature of a Final Withholding Tax, to wit:
>
> 'WITHHOLDING OF TAX AT SOURCE
>
> (A) Final Withholding Tax – Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the

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payor/withholding agent. The payee is not required to file an income tax return for the particular income.

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Sec. 2.58 (2) (a) of Revenue Regulations No. 2-98 provides that:

'WHEN TO FILE –

(a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.

xxx'

It is clear from the foregoing that final taxes are regarded as the full and final payment of the income tax due from the payee on the related income. Furthermore, final taxes should be paid and their corresponding returns be filed within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.

In the case at bar, the final taxes were paid and its corresponding 'Monthly Remittance Return of Final Income Taxes Withheld' was filed on April 25, 2001. Applying the two-year period as stated in Sections 204 and 229 of the 1997 National Internal Revenue Code, counting two years form April 25, 2001, the date of payment of the final tax, the last day of petitioner to file a claim for refund/tax credit for both administrative and judicial levels fell on April 25, 2003."

Moreover, in said cases the claimants for refund are the payee corporations, the one having the burden to pay the corporate income taxes, whereas, in the present case, petitioner claims the refund of P3,060,029.24, as the payor, or the withholding agent of the 10% final withholding tax who has the obligation to remit the same to the BIR. It bears stressing that unlike in the case of payee corporations who are liable to pay corporate income tax, petitioner, as a withholding agent, is not required to file a final adjustment return. As a withholding agent, petitioner is only required to file an Annual Information Return containing the list of payees and income payments, and the amount of taxes withheld from each payee. Clearly, the rulings that consider the date of filing of the Adjustment Return or Annual Income Tax Return as the reckoning point to count the two-year period of prescription enunciated in the cases of *ACCRA Investments Corporations vs. Court of Appeals*, supra, *Commissioner of Internal Revenue vs. TMX Sales, Inc.*, supra, *Commissioner of Internal Revenue vs. Philippine American Life Co.*, supra, and *Commissioner of Internal Revenue vs. Court of Appeals*,

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supra, are not applicable to the instant case involving refund of final withholding tax.

Finding no reversible error, We affirm the assailed Resolution dated November 14, 2007 of the First Division of this Court in so far as it ruled that petitioner's claim for refund of 10% final withholding tax for the month of March 2001 amounting to P3,060,029.29 had already prescribed.

WHEREFORE, premises considered, the instant "Petition For Partial Review" is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the cases was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice