REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

# *THIRD DIVISION*

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| GOVERNMENT OF SINGAPORE INVESTMENT CORPORATION PTE LTD., *Petitioner,* | **C.T.A. CASE NO. 8030** |
| | Members: |
| -versus- | BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, *Respondent.* | **Promulgated:** SEP 05 2012 |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

## THE CASE

This is a Petition for Review filed by Government of Singapore Investment Corporation PTE Ltd. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) in the total amount of P12,968,416.71, representing petitioner's final withholding taxes erroneously withheld on the interest income derived by petitioner during the period from February 2008 to November 2009 from its investments in Philippine Treasury Bonds.

## THE PARTIES

Petitioner is a financing institution wholly-owned and controlled by the Government of Singapore, duly organized and existing under the laws of Singapore, and is engaged in the management of Singapore's foreign reserves and authorized and mandated to open and operate the custody of current accounts, as may be necessary for the safe-keeping of assets and cash under its management, with principal office located at 168 Robinson Road, #37-01 Capital Towers, Singapore 068912.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes and may be served with summons, pleadings and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

## THE FACTS

The facts of the case, as stipulated by the parties, are as follows:

On October 12, 1990, petitioner entered into a Custody Agreement with the Philippine Branch of Hongkong Shanghai Banking Corporation (HSBC), whereby petitioner appointed HSBC, as custodian of its securities and other properties in the Philippines.

On May 20, 1999, petitioner also entered into a Direct Custodial Services Agreement (DCSA) with Citibank, N.A. (Citibank), whereby petitioner appointed the designated subsidiaries and affiliates of Citibank as its custodian, entitling them to hold certain assets of petitioner.

Petitioner, through its custodians in the Philippines, invested in various T-Bonds with maturities of more than one (1) year. As custodians, HSBC and Citibank, are responsible for facilitating petitioner's investments in T-Bonds and for safe-keeping the T-Bonds that petitioner acquires. HSBC and Citibank are also responsible for collecting the coupons/interest due on petitioner's T-Bonds holdings when they fall due on coupon date, and credit the same into petitioner's custody accounts.

During the period from February 2008 to November 2009, petitioner derived interest income from its investments in T-Bonds amounting to P64,842,083.53, which was made subject to FWT at the rate of twenty percent (20%), or a total amount of P12,968,416.71, broken down, as follows:

| ISIN T-Bonds | Face Value | Gross annual interest rate | FWT Rate | Payable/ coupon date | Gross amount of Interest | Tax Withheld |
|---|---|---|---|---|---|---|
| Account Group B | | | | | | |
| PIBD0309B132 | 10,000,000 | 8.5 | 20% | Feb. 17, 2008 | 425,000.00 | 85,000 |
| PHY6972FAV23<br>PIBD0511C622 | 23,500,000 | 4.25 | 20% | Sept. 3, 2009 | 998,750.00 | 199,750 |

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|---|---|---|---|---|---|---|
| PHY6972FAZ37 PIBD0713C438 | 9,000,000 | 4.375 | 20% | Sept. 3, 2009 | 393,750.00 | 78,750 |
| Account Group C | | | | | | |
| PIBD0310B167 | 572,439,401 | 5.5 | 20% | Feb. 21, 2008 | 15,742,083.53 | 3,148,416.71 |
| PIBD0309B132 | 455,000,000 | 8.5 | 20% | Feb. 17, 2008 | 19,337,500.00 | 3,867,500.00 |
| PHY6972FAV23 PIBD0511C622 | 329,000,000 | 4.25 | 20% | Sept. 3, 2009 | 13,982,500.00 | 2,796,500.00 |
| PHY6972FAZ37 PIBD0713C438 | 126,000,000 | 4.375 | 20% | Sept. 3, 2009 | 5,512,500.00 | 1,102,500.00 |
| Account Group H | | | | | | |
| PIBD0309B132 | 35,000,000 | 8.5 | 20% | Feb. 17, 2008 | 1,487,500.00 | 297,500.00 |
| PHY6972FAV23 PIBD0511C622 | 117,500,000 | 4.25 | 20% | Sept. 3, 2009 | 4,993,750.00 | 998,750.00 |
| PHY6972FAZ37 PIBD0713C438 | 45,000,000 | 4.375 | 20% | Sept. 3, 2009 | 1,968,750.00 | 393,750.00 |
| **Total** | | | | | **P64,842,083.53** | **P12,968,416.71** |

The Final Withholding Taxes on petitioner's interest income from T-Bonds were withheld and remitted to the BIR by the Bureau of Treasury.

On December 29, 2009, petitioner filed with the BIR a written claim for refund or issuance of TCC in the amount of P12,968,416.71, representing the FWT erroneously withheld on interest income derived by petitioner during the period from February 2008 to November 2009 from its investments in T-Bonds.

In order to preserve its right and to toll the running of the prescriptive period to file its judicial claim, on February 12, 2010, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses that petitioner's alleged claim for refund is subject to administrative investigation by the Bureau of Internal Revenue; that petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law; that in claims for refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of subordinate officers and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure; that petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body; and in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund.

Petitioner presented Ma. Cristina Averia, Reinard Alexander A. Cuvin, Mardomeo N. Raymundo, Jr., Celeste Fe Guevarra-Tanseco, Atty. Alexander O. Ner, and Maribeth Feliciano, as witnesses, and documentary evidence marked as Exhibits "A" to "EE", inclusive of their sub-markings, which were all admitted by the Court in its Resolutions dated July 13, 2011 and September 12, 2011, after petitioner filed a Motion for Reconsideration.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

On January 6, 2012, respondent filed its "Memorandum".

On January 9, 2012, petitioner filed an "Urgent Omnibus Motion" to re-open the trial and to allow petitioner to present the Memorandum Report of Revenue Officers Nina Christina Espiritu and Mary Grace Balagtas and Group Supervisor, Maribeth Feliciano, as additional evidence, which the Court, in the interest of justice, granted in its Resolution dated February 10, 2012.

Petitioner presented Maribeth Feliciano, as additional witness, and additional documentary evidence, which was admitted by the Court in its Resolution dated April 12, 2012.

Thereafter, petitioner was ordered to file its memorandum, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

On June 6, 2012, petitioner filed its "Memorandum"; thus, the case was deemed submitted for decision.

## ISSUE

As stipulated by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT PETITIONER IS A FINANCING INSTITUTION WHOLLY OWNED BY THE GOVERNMENT OF SINGAPORE.

II

WHETHER OR NOT THE INTEREST INCOME DERIVED BY PETITIONER FROM ITS INVESTMENTS IN PHILIPPINE T-BONDS IS EXEMPT FROM INCOME TAX UNDER SECTION 32(B)(7)(A), TAX CODE AND SECTION 2.57.5, REVENUE REGULATIONS NO. 2-98.

III

WHETHER OR NOT PETITIONER DERIVED INTEREST INCOME IN THE GROSS AMOUNT OF P64,842,083.53 FROM ITS INVESTMENTS IN PHILIPPINE T-BONDS FOR THE PERIOD OF FEBRUARY 2008 TO NOVEMBER 2009.

IV

WHETHER OR NOT THE INTEREST INCOME DERIVED BY PETITIONER FROM ITS INVESTMENTS IN PHILIPPINE T-BONDS FOR THE PERIOD OF FEBRUARY 2008 TO NOVEMBER 2009 WAS MADE SUBJECT TO FWT AT THE RATE OF 20%.

V

WHETHER OR NOT THE FWT ON PETITIONER'S INTEREST INCOME FROM PHILIPPINE T-BONDS FOR THE PERIOD OF FEBRUARY 2008 TO NOVEMBER 2009, AMOUNTING TO P12,968,416.71, WAS REMITTED AND PAID TO THE BIR.

VI

WHETHER OR NOT PETITIONER FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TCC IN THE AMOUNT OF P12,968,416.71, REPRESENTING FWT ERRONEOUSLY WITHHELD ON THE INTEREST INCOME DERIVED BY PETITIONER DURING THE PERIOD OF FEBRUARY 2008 TO NOVEMBER 2009 FROM ITS INVESTMENTS IN PHILIPPINE T-BONDS, WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER SECTIONS 204(C) AND 229, TAX CODE.

***Principal Issue***

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of TCC in the aggregate amount of P12,968,416.71, representing petitioner's FWT on its interest income received during the period from February 2008 to November 2009.

**THE COURT'S RULING**

The Court finds merit in the petition.

At the outset, it bears stressing that the principal issue raised in this petition is not novel, as this Court in C.T.A. Case No. 7726, promulgated on April 29, 2010; and C.T.A. EB No. 689, promulgated on June 10, 2011, involving the same parties, had already ruled said issue for petitioner Government of Singapore Investment Corporation PTE Ltd.

The Court likewise rules for the petitioner.

*Section 32(B)(7)(a) of the NIRC of 1997, as amended,* provides:

"SEC. 32. *Gross Income.* –

xxx 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

(7) Miscellaneous Items.—

(a) Income Derived by Foreign Government. – Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign government, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

Corollary thereto, *Section 2.57.5 of Revenue Regulations No. 2-98, as amended,* provides:

> "Section 2.57.5. *Exemption from Withholding.* – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx."

Pursuant to the above provisions, for the interest income received by petitioner from its investments in T-Bonds to be exempt from income tax and consequently, from FWT, petitioner must either be a (1) foreign government, or (2) a financing institution owned, controlled, or enjoying refinancing from foreign governments, or (3) an international or regional financial institution established by foreign governments.

As regards the issue of whether or not petitioner is a financing institution wholly-owned and controlled by the Government of Singapore, this Court in *C.T.A. Case No. 6745,* promulgated on June 6, 2008, and *C.T.A. Case Nos. 7726,* promulgated on April 29, 2010, involving the same parties, had already ruled that petitioner is a financing institution wholly-owned and controlled by the Government of Singapore.

Therefore, as a financing institution wholly-owned and controlled by the Government of Singapore, pursuant to *Section 32(B)(7)(a) of the NIRC of 1997, as amended,* petitioner is exempt from income tax and consequently, from FWT on income derived from its investments in T-Bonds.

However, in order for petitioner to be entitled for a refund of erroneously paid taxes, petitioner must comply with the requisites provided by law.

In this regard, *Section 229 of the NIRC of 1997, as amended,* provides:

> "**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, of any sum alleged to have been excessively or in any manner wrongfully 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."

The above provision allows the taxpayer recovery of any:

1) national internal revenue tax that has been erroneously collected,
2) national internal revenue tax that has been illegally collected,
3) penalty claimed to have been collected without authority, or
4) any sum that has been excessively or in any manner wrongfully collected,

within a period of two (2) years from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

Hence, pursuant to *Section 229,* a taxpayer to be entitled for a refund, the following requisites must be proven: (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) the claim for refund or credit must have been filed within two (2) years from the date of payment of the tax, or penalty, regardless of any supervening cause that may arise after payment.

***First Requisite: Tax has been erroneously or illegally collected***

Pursuant to *Section 32(B)(7)(a) of the NIRC of 1997, as amended*, the interest income earned by petitioner from its investments in Philippine T-Bonds is exempt from income tax. Therefore, the 20% final tax withheld from the interest income earned was erroneously or illegally collected.

To prove that petitioner erroneously paid the final tax of 20% on its interest income from Philippine T-Bonds, petitioner presented the following documentary evidence:

1) Bureau of Treasury Certification dated December 10, 2009 confirming the amount of interest income derived by the T-Bonds recorded under HSBC's ROSS Custodian Account during the period February 1, 2008 to February 28, 2008 and the amounts of final tax withheld therefrom (Exhibit "D");

2) Bureau of Treasury's Letter dated December 22, 2009 covering the Journal Entry Vouchers and other documents evidencing the remittance to the BIR of the FWTs on coupon payments to HSBC's ROSS Custodian Account (Exhibit "E");

3) Bureau of Treasury's Statement of Final Withholding Taxes and Remittances to BIR for the coupon payments to HSBC's Custodian Account for the period February 2008 to November 2009 (Exhibit "E-1");

4) BIR, Revenue Accounting Division Certification No. RAD-10-08-168-Cert. dated August 27, 2010 confirming the receipt of the FWTs due on the Bureau of Treasury's coupon payments to HSBC's ROSS Custodian Account for the period February 2008 to December 2008 (Exhibit "V");

5) Bureau of Treasury Certification dated May 12, 2010 confirming the amount of interest income derived by the T-Bonds recorded under Citibank's ROSS Custodian Account on September 3, 2009 and the amounts of final tax withheld therefrom (Exhibit "I");

6) Bureau of Treasury's Letter dated February 3, 2011 covering the Statement of FWT and remittances for Citibank's ROSS

Custodian Account for the period of September 1, 2009 to September 30, 2009 (Exhibit "AA");

7) Bureau of Treasury's Letter dated September 23, 2010 covering the Journal Entry Vouchers evidencing withholding and remittance to the BIR of the FWT on the coupon payments on September 3, 2009, inclusive of the T-Bonds holdings of Citibank as custodian (Exhibit "BB");

8) Bureau of Treasury's Statement of Final Withholding Taxes and Remittances for Citibank's ROSS Custodian Account for the period September 1, 2009 to September 30, 2009(Exhibit "AA-1");

9) BIR Revenue Accounting Division Certification No. RAD-11-03-011-Cert. dated March 7, 2011 confirming the receipt of the FWTs due on the Bureau of Treasury's coupon payments to Citibank's ROSS Custodian Account in September 2009 (Exhibit "CC");

A perusal of the Certification dated December 10, 2009 *(Exhibit "D")* shows that the Bureau of Treasury certified that the FWT in the total amount of P110,795,872.02 was withheld from the coupons due to the T-Bonds holdings under HSBC-Custodian Account for the period of February 1 to 28, 2008. In addition, the BIR Revenue Accounting Division Certification No. RAD-10-08-168-Cert., dated August 27, 2010 *(Exhibit "V"),* confirmed the receipt of the FWT due on Bureau of Treasury's coupon payments to HSBC's ROSS Custodian Account for the period of February 2008 to December 2008.

In the sworn statement of Reinard Alexander Cuvin *(Exhibit "W")*, he attested to the fact that the amount of P7,398,416.71, which was part of the P110,795,872.02 withheld by the Bureau of Treasury from HSBC's ROSS Custodian Account, was petitioner's FWT on its gross coupon entitlement on its investments in T-Bonds for the period of February 2008 to December 2008.

As regards petitioner's investments in T-Bonds under the custody of Citibank, a perusal of the Certification, dated May 12, 2010 *(Exhibit "I")*, shows that the Bureau of Treasury withheld the amount of P14,049,663.81 from the coupons due to the T-Bonds holdings under Citibank-Custodian Account for the period of September 1 to 30, 2009. This was confirmed by the BIR Revenue Accounting Division Certification No. RAD-11-03-011-Cert., dated March 7, 2011. Out of the P14,049,663.81 withheld from Citibank, P5,570,000.00 pertains to petitioner's FWT on gross coupon entitlement, as attested to by Celeste Fe Guevarra-Tanseco in her Supplemental Sworn Statement *(Exhibit "EE")*.

In sum, petitioner's FWT on its investments in T-Bonds under HSBC and Citibank's ROSS Custodian Accounts amounts to P12,968,416.70.

***<u>Second Requisite: Claim for refund filed within two (2) years from the date of payment of the tax</u>***

Records show that the Bureau of Treasury remitted and paid to the BIR the FWT on the first coupon payment on February 22, 2008 *(Exhibit "E-1").* Counting two (2) years from February 22, 2008, petitioner had until February 22, 2010, within which to file its claim for refund/tax credit certificate both administratively and judicially. Therefore, both petitioner's administrative claim for refund filed on December 29, 2009 and judicial claim filed on February 12, 2010 were filed within the two-year prescriptive period. Clearly, the second requirement has been complied with.

For all the foregoing, the Court finds that petitioner has sufficiently established its entitlement to a refund/tax credit of its erroneously withheld final tax in the amount of P12,968,416.70.

**WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWELVE MILLION NINE HUNDRED SIXTY EIGHT**

**THOUSAND FOUR HUNDRED SIXTEEN PESOS and 70/100 (P12,968,416.70)**, representing erroneously withheld final tax.

**SO ORDERED.**

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**LOVELL R. BAUTISTA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
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.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson, Third Division

# 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