REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INVESTMENT & CAPITAL CORPORATION OF THE PHILIPPINES, as withholding agent of Development Bank of Singapore (DBS),
Petitioner,

- versus -

C.T.A. CASE NO. 5643

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 17 2000

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DECISION

This is a claim for the issuance of tax credit certificate in the name of the Development Bank of Singapore ("DBS" for brevity) amounting to ₱575,000.00 which allegedly represents erroneously withheld tax on cash dividends.

Petitioner is an investment banking corporation duly organized and existing under and by virtue of Philippine laws, with office address located at the 15th Floor of Solidbank Building, 777 Paseo de Roxas, Makati City, Metro Manila

The facts are simple.

Sometime in April 1996, Petitioner declared a twenty (20%) percent cash dividend payable to its stockholders of record, one of which is the Development Bank of Singapore ("DBS" for brevity) which holds a share holding of 20% of its authorized capital stock.

Based on its share holding, the sum of ₱4,400,000.00 representing cash dividend was made payable to DBS. On May 13, 1996, Petitioner as withholding agent, subjected said sum to an expanded withholding tax rate of 25% and correspondingly remitted the amount of ₱1,100,000.00 to the Bureau of Internal Revenue.

Again in October 1996, Petitioner declared another five (5%) percent cash dividend payable to its stockholders of record. This time, the cash dividend of DBS in the amount of ₱1,500,000.00 was subjected to 35% expanded withholding tax and the tax due thereon in the amount of ₱525,000.00 was duly remitted on November 20, 1996 to the Bureau of Internal Revenue.

Upon realizing, however, that the tax on cash dividends paid by a Philippine corporation to its Singaporean stockholder corporation owning at least 15% of its outstanding capital stock should only be 15% pursuant to the provisions of the RP-Singapore Tax Treaty and not, on the erroneous 25% and 35% tax rates it has previously applied, Petitioner filed on April 1, 1998, a written claim for the refund of ₱575,000.00, with the Bureau of Internal Revenue's Revenue District No. 50 located at Makati City.

Due to alleged inaction of Respondent however on its claim for refund, Petitioner instituted the present appeal on May 14, 1998.

At bar, Petitioner reasserts its stance a quo. As evidence to prove its claim for refund, Petitioner submitted, from among others, the following exhibits, to wit:

1. Exhibit C - Secretary's Certificate issued by the Assistant Corporate Secretary of Petitioner. dated August 27, 1997, attesting to the 20% ownership by DBS of its issued and outstanding common capital stock.

2. Exhibits D to D-3 & E to E-3 - Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743 W) for the months of April and October of 1996 with corresponding lists of payees showing DBS as having been subjected to 25% and 35% withholding taxes on the cash dividends it had received in the amount of ₱4,400,000.00 and ₱1,500,000.00, respectively.

3. Exhibit G - Written claim for refund filed on April 1, 1998.

While acknowledging the provisions of the RP-Singapore Tax Treaty under Section 12(2)(a) thereof and thus the validity of the amount of Petitioner's claim for refund, Respondent nonetheless interposes that Petitioner is liable for penalties in the form of surcharges and interests for late filing of withholding tax returns and payment of withholding taxes totalling ₱563,428.29, net of Petitioner's amount of claim. Thus:

> "Taking into account the foregoing provisions, it is clear that the rate used by ICCP in the withholding of the tax, 25% and 35% respectively, in its dividend payment last April and October 1996 exceeded the 15% tax rate as stipulated in the treaty. All in all, the excess amount is P740,000.00 computed as follows:

Date	Dividends Paid	Rate Used	Withholding Tax	15% Tax Rate (RP-Singapore Treaty	Excess Payment
April 1, 1996	P4,400,000.00	25%	P1,100,000.00*	P660,000.00	P440,000.00
October 26, 1996	1,500,000.00	35%	525,000.00**	225,000.00	300,000.00
TOTAL	P5,900,000.00		P1,625,000.00	P885,000.00	P740,000.00

> * Payment and filing of return made on May 13, 1996 (Last day of filing and payment is May 10, 1996; subject to penalties)
>
> ** Payment and filing of return made on November 20, 1996 (Last day of filing and payment is November 10, 1996; subject to penalties)
>
> Considering that the returns were filed and paid late, nevertheless they are subject to penalties computed as follows:

Withholding tax due for April 1996 paid and filed on May 13, 1996 (P1,100,000.00 tax on dividend included)	P4,317,597.89 (Verified paid by Revenue Accounting Division per Certification dated 5-19-99)

Penalties due thereon:

25% surcharge - late payment	P1,079,399.47	
20% interest - May 11 to 13, 1996 (3 days)	8,871.78	
Compromise penalty - late payment	25,000.00	P1,113,271.25

Withholding tax due for October 1996 paid and filed on November 20, 1996 (P525,000.00 tax on dividend included)	P678,051.38 (Verified paid by Revenue Accounting Division per Certification dated 5-19-99)

Penalties due thereon:

25% surcharge - late payment	P169,512.85	
20% interest - Nov. 11 to 20, 1996 (10 days)	4,644.19	
Compromise penalty - late payment	16,000.00	P 190,157.04
Total penalties due from ICCP, as withholding agent		P1,303,428.29

Accordingly, investment and Capital Corporation of the Philippines (ICCP), the claimant of the refund, is at the same time liable for penalties on late filing and late payment. It will appear that ICCP is still liable for P563,428.29, if offsetting is permitted, computed as follows:

Amount of refund requested	P 740,000.00
Less: Amount of penalties due for late filing and late payment of withholding tax	(1,303,428.29)
Amount still due from ICCP	(P 563,428.29)

(Memorandum, dated July 1, 1999, Exhibit 2; Docket, pp.102-103)

Records bear that with respect to Petitioner's claim for refund in the amount of ₱740,000.00, this Court in a Resolution, dated November 18, 1998, denied the same together with the admission of its amended petition for review in view of the fact that in accordance with Section 229 of the Tax Code, as amended, only the amount of ₱575,000.00 has been claimed at the administrative level. Any increase beyond ₱575,000.00 would fall short of the requirement under said section that what is claimed judicially should have been first subjected to an administrative claim for refund.

The issue confronting Us is limited to whether or not Petitioner is entitled to its claim for refund in the amount of ₱575,000.00.

We rule in the negative. Petitioner has failed to surmount the evidence required to prove entitlement to its claim for refund. Notwithstanding the fact that it has sufficiently offered in evidence documents which tend to establish the amount of its claim, both in fact and in law, it has however been remiss in disproving the countervailing evidence adduced by the Respondent.

We are referring to the failure of the Petitioner to rebut the specific finding of Respondent revenue examiners in the above quoted memorandum that despite the validity of its claim for refund, Petitioner is still liable for penalties on account of late filing and payment of withholding taxes.

There is a basis for the finding arrived at by the revenue examiners. Under BIR Revenue Regulations No. 12-93 as amended by Revenue regulations No. 18-93, taxes withheld are required to be remitted within 10 days after the end of each calendar month, with the exception of large taxpayers who are required to remit taxes so withheld within 25 days after the end of each calendar month. In the abovesaid memorandum, Petitioner has not been categorized as a large taxpayer. Consequently, it was found to be liable to remit taxes within 10 days after the end of each calendar month. Since it has filed the returns for the months of April and October beyond the ten-day period, it has been assessed the corresponding penalties which amounts bigger than its present claim at bar.

To this Court's dismay, however, Petitioner never bothered to make any kind of refutation.

It is to be noted that public officers, like Respondent's revenue examiners, enjoy the presumption of regularity in the performance of their official duty of investigating taxpayers liabilities [Section 3(m), Rule 131, Rules of Court]. Unrebutted thus, the aforequoted memorandum is superior in probative value than Petitioner's quantum of proof. Petitioner's silence on the subject is tantamount to acquiescence of Respondent's finding, most especially that it knew for a fact that it was supposed to make a comment thereon (Minutes, July 7, 1999; Docket, p. 97).

Petitioner is reminded that claims for tax refund are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming refund. The burden of proof is upon the taxpayer who claims the refund in his favor. It cannot be permitted to exist upon vague implications. **(Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710; Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, 207 SCRA 549; Emmanuel & Zenaida Aguilar vs. Commissioner, CA-GR No. Sp. 16432, March 30, 1990)**.

With respect to the liability of the Petitioner for the amount of ₱563,528.29 representing interests and surcharges, as found in the above memorandum, this Court is not bound to grant the same in view of the fact that herein Petition is solely an action for a claim for refund; and that it is not based on a final and demandable assessment which Respondent has the right to collect, but rather on an investigative report that is recommendatory in nature only.

WHEREFORE in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
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