REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLIED BANKING CORPORATION
EMPLOYEES' RETIREMENT PLAN,
Petitioner,

- versus -

C.T.A. CASE NO. 4893

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
MAR 19 1998

x - x

DECISION

The case involves a claim for refund in the aggregate amount of ₱3,026,760.32 allegedly representing erroneously withheld taxes from the investment income of the petitioner for taxable years 1989 to 1992.

Petitioner Allied Banking Corporation Employees' Retirement Plan is an employees' trust maintained by its employer, Allied Banking Corporation, to provide retirement, pension, disability and death benefits to its employees. The said retirement plan was approved and qualified as exempt from income tax by the respondent's Bureau (Exhibit C).

From 1989 up to 1992, petitioner made several investments and earned therefrom interest income from which were withheld 20% final withholding tax, as follows:

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	1989	1990	1991	1992	TOTAL
EARNINGS FROM INVESTMENT INCOME ON:					
BONDS AND OTHER DEBT INST.-GS	1,506,446.39	2,008,382.96	7,269,441.27	3,009,604.54	13,873,875.16
SAVINGS DEPOSITS	37,183.29	123,693.39	20,647.31	16,861.09	198,385.08
TIME DEPOSITS	1,061,085.97	-	-	-	1,061,085.97
	2,604,715.65	2,212,076.35	7,290,088.58	3,026,465.63	15,133,346.21
EXPENSES INCURRED WITHHOLDING TAX COLLECTED ON:					
INCOME BONDS AND OTHER DEBT INST.-GS	301,289.28	417,676.59	1,453,888.25	601,920.91	2,774,775.03
INCOME ON SAVINGS DEPOSITS	7,436.66	24,741.68	4,128.58	3,372.18	39,679.10
INCOME ON TIME DEPOSITS	212,306.19	-	-	-	212,306.19
	521,032.13	442,418.27	1,458,016.83	605,293.09	3,026,760.32

On August 31, 1992, petitioner filed a written claim for refund with the Bureau of Internal Revenue but was not immediately acted upon. Thus, on December 28, 1992, the instant petition was filed.

The question as to whether or not interest income derived by an employees' trust from its investments in money placements and purchase of government securities is exempt from income tax is settled in view of respondent's concession in her Memorandum, dated November 13, 1996,

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that, indeed, retirement funds are exempt from the final withholding tax on interest income from money placements. However, respondent still maintains her objection to the grant of the claim for refund on grounds of prescription and failure to present proof of investment as having been made by the retirement plan.

Respondent points out that taxes paid by the petitioner during the period of 1989 to December 28, 1990 have already been barred by prescription taking into strict consideration the date when the petition for review was filed in this Court and We quote, thus:

> "It is very significant to note that petitioner's Petition for Review was filed before the Court of Tax Appeals on 28 December 1992, and involves a claim for refund of taxes allegedly paid during the years 1989, 1990, 1991 and 1992. Applying Section 230 of the NIRC, as interpreted by the Supreme Court, it is quite clear that when petitioner filed its Petition for Review on December 28, 1992, more than two years had elapsed from the payment of taxes covered by the period 1989 to 27 December 1990, hence the refund claimed by the petitioner of taxes paid during the same period has already been barred by prescription."

The second important point raised by respondent relates to the factual basis of petitioner's claim taking her cue from a similar case entitled **BPI as trustee of Various Retirement Funds vs. CIR, CTA Case Nos. 4898, 4900 and 4940** where this Court ruled that proof of

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participation by the various retirement funds can only be established by a showing of the actual payment made by each of them. Portions of respondent's Memorandum are quoted hereunder, thus:

> "The petitioner failed to establish that the funds used by its trustee, Allied Banking Corporation, in the various investment were derived from the funds of the retirement plan.
>
> x x x
>
> In the present case, there is an absence of evidence to show that the assets of the retirement plan were actually used in the investments.

The issues left for this Court's determination are the following:

1. whether or not the claim for refund has prescribed;

2. whether or not petitioner has substantiated its claim for refund.

Petitioner, in support of its claim, presented as evidence the certification issued by the BIR acknowledging the tax-exempt status of their retirement plan (Exhibit "C") as well as copies of the confirmations of sale and certification issued by the Central Bank evidencing the various purchases of treasury bills on several occasions with the corresponding amount of final taxes withheld therefrom. Copies of confirmation

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receipts issued by the Central Bank were also formally offered as evidence to show receipt by the latter of tax payments made by Allied Banking Corporation pertaining to interest on savings and time deposits (Exhibits "Q-A", "Q-1-A", "Q-2-A", "Q-3-A", "Q-4-B", "Q-5-A", "Q-6-A", "Q-7-A", "Q-8-A", "Q-9-A", "SS-SS-11"). Likewise, certifications by an independent CPA, Mr. Eduardo Licuanan, were offered to attest to the correctness of the amounts being claimed (Exhibits "J-89", "SS-12").

While We are convinced that petitioner is entitled to the refund being sought, this Court, however, finds that some of the claims of petitioner are already barred by prescription. Hence, a portion of the claim cannot be considered in the final computation of the amount to be granted to petitioner. Under Section 230 of the Tax Code:

> **SEC. 230.** ***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 excessive 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.

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> In any case, no such suit or proceeding shall be begun after the expiration of two 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.

It is clear from the aforecited law that the counting of the two-year prescriptive period commences to run from the date of payment of the tax and the payment of the final taxes on interest is considered to be made on the 25th day of the following month after the close of each calendar quarter pursuant to Section 51(a) of the Tax Code, thus:

> **Sec. 51. *Returns and payment of taxes withheld at source.*** - (a) *Quarterly returns and payment of taxes withheld.* - Taxes deducted and withheld under Section 50 shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of

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> each calendar quarter; while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made. (Underscoring supplied)

Verily, the taxes withheld from the year 1989 up to September 30, 1990 are barred by prescription, the judicial claim for refund having been filed on December 28, 1992. It is for this reason that the following amounts indicated in Exhibits "J", "P" and "RR-30" were excluded in the final computation:

Issue Date	Face Value	Interest Income	Withholding Tax
Prescribed Treasury Bills (Exhibit "J")			
02-28-90	₱ 72,070,000.00	₱ 51,260.15	₱ 10,252.04
03-09-89	15,000,000.00	424,733.30	84,946.66
03-09-89	10,000,000.00	191,301.68	38,260.33
05-10-89	4,000,000.00	13,034.94	2,606.99
05-26-89	116,000,000.00	160,691.79	32,138.36
05-24-89	19,000,000.00	203,669.76	40,733.95
06-20-89	10,000,000.00	125,039.62	25,007.93
07-26-89	20,000,000.00	10,813.43	2,162.69
08-02-89	35,000,000.00	182,752.41	36,550.48
08-30-89	11,500,000.00	25,065.30	5,013.06
09-27-89	10,000,000.00	3,522.46	704.49
07-31-90	10,000,000.00	74,770.18	14,954.03
07-31-90	10,000,000.00	1,269,365.17	253,873.04
08-01-90	12,000,000.00	364,412.78	72,882.56
08-22-90	50,000,000.00	244,511.52	48,902.30
03-03-89	15,000,000.00	130,330.78	26,066.15
09-11-89	22,760,000.00	299.84	59.96
09-11-89	100,000,000.00	188,676.84	37,735.37
09-13-89	50,000,000.00	4,337.97	867.60
03-08-89	1,000,000.00	1,870.07	374.01
05-10-89	39,000,000.00	3,956.86	791.37
05-26-89	116,000,000.00	106,466.00	21,293.21
06-20-89	10,000,000.00	6,040.37	1,208.09
08-30-89	11,500,000.00	14,399.03	2,879.80
05-23-90	11,500,000.00	185,211.34	37,042.27

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Issue Date	Face Value	Interest Income	Withholding Tax
02-15-89	35,000,000.00	967.46	193.49
02-15-89	11,500,000.00	1,710.48	342.10
02-22-89	10,000,000.00	72,768.76	14,553.74
02-23-89	10,000,000.00	4,249.17	849.83
03-02-89	16,500,000.00	655.63	131.13
03-09-89	15,000,000.00	44,393.38	8,878.67
05-10-89	4,000,000.00	3,355.17	671.03
05-15-89	15,900,000.00	849.49	169.89
06-26-89	5,000,000.00	81,925.89	16,385.17
06-27-89	5,000,000.00	43,777.47	8,755.49
05-19-89	8,000,000.00	11.55	2.31
12-29-88	8,000,000.00	21,443.94	4,288.80
11-23-88	10,000,000.00	32,001.79	6,400.36
11-23-88	10,000,000.00	27,474.59	5,494.92
12-07-88	10,000,000.00	12,634.16	2,526.83
09-13-89	2,700,000.00	431.43	86.29
			₱ 867,036.79

Prescribed Time Deposits (Exhibit "RR-30") - ₱ 212,306.19

Prescribed Savings Accounts Deposits (Exhibit "P")

Issue Date	Interest Income	Withholding Tax
SA 1000-42269-5		
03-22-89	₱ 846.80	₱ 169.36
06-23-89	987.59	197.52
09-25-89	9,512.68	1,902.54
12-22-89	6,173.62	1,234.72
03-23-90	7,683.94	1,536.79
06-25-90	44,561.14	8,912.23
09-25-90	39,181.67	7,836.33
SA 1000-45005-2		
03-22-89	₱ 155.68	₱ 31.14
06-23-89	659.88	131.97
09-25-89	271.74	54.35
12-22-89	18,575.30	3,715.06
03-23-90	319.48	63.90
06-25-90	23,101.25	4,620.25
09-25-90	6,781.63	1,356.33
		₱ 31,762.49

TOTAL AMOUNT ₱1,111,105.47

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Moreover, a portion of the claimed amount pertaining to treasury bills was not supported by documentary evidence, hence the amount of ₱30,172.70 was also excluded in the final computation. As to the rest of the amount claimed, satisfactory proof was submitted by petitioner to establish the identity and participation of the assets of the retirement plan to the investments made and that corresponding income taxes were withheld from its interest income. In summary, only the amount of ₱1,885,482.15 should be granted to petitioner, computed as follows:

Amount of final withholding tax claimed on			
a. Income bonds & other debt instrument GS		₱2,774,775.03	
b. Savings deposits		39,679.10	
c. Time deposits		212,306.19	₱3,026,760.32
Less: Unallowable			
a. Prescribed			
1. Treasury bills		₱ 867,036.79	
2. Savings deposits		31,762.49	
3. Time deposits (all)		212,306.19	
Total		₱1,111,105.47	
b. Undocumented portion of treasury bills:			
Claimed	₱2,774,775.03		
Per Exh. J	2,744,602.33	30,172.70	1,141,278.17
AMOUNT REFUNDABLE			₱1,885,482.15

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to

REFUND to petitioner the amount of P1,885,482.15 representing erroneously paid final withholding taxes.

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
Court of Tax Appeals

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