REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GOVERNMENT OF SINGAPORE INVESTMENT CORPORATION PTE., LTD.,
Respondent.

CTA E.B. NO. 689
(CTA CASE NO. 7726)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 1 0 2011 apolinario 2:00 p.m.

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed by the petitioner, the Commissioner of Internal Revenue, against the respondent, the Government of Singapore Investment Corporation Pte., Ltd., seeking to set aside the Decision dated April 29, 2010[1] and the Resolution dated September 16, 2010[2], rendered by the Special First Division (Court in Division) of this Court in CTA Case No. 7726, entitled *"Government of Singapore Investment Corporation Pte., Ltd., Petitioner,*

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[1] Penned by Associate Justice Caesar A. Casanova, and concurred by Presiding Justice Ernesto D. Acosta, and Associate Justice Lovell R. Bautista, Docket, pp. 20 to 37.
[2] Docket, pp. 38 to 41.

vs. Commissioner of Internal Revenue, Respondent", the dispositive portions of which respectively read:

DECISION dated April 29, 2010

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of NINETY FIVE MILLION FIVE HUNDRED THOUSAND FORTY EIGHT AND 61/100 pesos (PhP95,500,048.61), representing 20% final taxes withheld on the interest income derived from petitioner's investment in Philippine T-bonds for the period February 2006 to November 2007.
>
> **SO ORDERED.**"

RESOLUTION dated September 16, 2010

> "**WHEREFORE**, premises considered, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (hereafter referred to as the Commissioner), vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes, including final income tax withheld on interest income received by non-residents. The Commissioner holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Government of Singapore Investment Corporation Pte., Ltd. (hereafter referred to as GSICPL) is a corporation duly organized and existing under the laws of Singapore, with office at 168 Robinson Road, #37-01 Capital Tower, Singapore, 068912. Its principal object is to manage Singapore's foreign reserves, and it is authorized and mandated to open and operate the custody of current accounts as may be necessary for safekeeping of assets and cash under its management.

GSICPL, through its custodian in the Philippines, the Hongkong and Shanghai Banking Corporation, invested in various T-bonds with maturities of more than one (1) year. The yield of the T-bonds was represented by coupons, expressed as a percentage of the face value of the bonds on a *per annum* basis, payable semi-annually.

During the period February 2006 to November 2007, GSICPL derived interest income from its investments in T-bonds amounting to ₱ 477,500,243.06, which was made subject to final withholding tax (FWT) at the rate of twenty percent (20%) in the total amount of ₱ 95,500,048.61 and which was later remitted to the BIR by the Bureau of Treasury.

GSICPL alleges that, as a financing institution wholly-owned and controlled by the Government of Singapore, it is exempt from income tax on income derived from its investments in T-bond pursuant to Section 32(B)(7)(a) of the National Internal Revenue Code (NIRC), and Section 2.57.5 of Revenue Regulations No. (RR) 2-98, as amended.

On January 28, 2008, GSICPL filed with the BIR an administrative claim for refund or issuance of a Tax Credit Certificate (TCC) in the amount of ₱ 95,500,048.61, representing FWT erroneously withheld on the interest income derived by GSICPL from the period February 2006 to November 2007 from its investments in T-bonds.

The Commissioner neither approved nor denied said administrative claim. Hence, GSICPL filed, on February 1, 2008, a Petition for Review before a Division of this Court docketed as CTA Case No. 7726. On April 11, 2008, the Commissioner filed her Answer in said case, wherein she raised certain special and affirmative defenses.

During trial, GSICPL presented documentary and testimonial evidence while the Commissioner, during the supposed presentation of respondent's evidence before the Court in Division on May 26, 2009, manifested, through counsel in open court, that she waives her right to present evidence. Upon the submission of the parties' respective memorandum, the case was considered submitted for decision in the Resolution promulgated on August 18, 2009.

In the assailed Decision dated April 29, 2010, the Court in Division ruled that GSICPL, having proven that it is a financial institution wholly owned and controlled by the Government of Singapore, is indeed exempt from the payment of income tax and final withholding tax on the interest income it derived from its investments in Philippine T-bonds, pursuant to the provision of Section 32(B)(7)(a) of the NIRC of 1997, as amended, and Section 2.57.5 of RR 2-98, as amended. The Court in Division likewise found that GSICPL has sufficiently proven that it invested in Philippine T-bonds, and has earned interest income therefrom in the amount of ₱ 477,500,243.06, and the corresponding 20% final taxes thereon in the amount of ₱ 95,500,048.61 were withheld and remitted by the Bureau of Treasury to the BIR.

As regards the issue of prescription, the Court in Division decreed that both the administrative and judicial claim were filed within the two (2)-year period required by law, particularly Section 229 in relation to Section 204 of the NIRC and Section 2.58(A)(2)(a) and (b) of RR 2-98. Accordingly, the respondent-Commissioner was ordered to refund or issue a tax credit certificate in the amount of ₱ 95,500,048.61 in favor of GSICPL.

On May 24, 2010, the Commissioner filed a Motion for Reconsideration of said Decision contending that the filing of the Commissioner's Answer in CTA Case No. 7726 is an effective revocation of BIR Ruling DA 130-02, thus, GSICPL can no longer rely on the same, negating any possibility of entitlement to a claim for refund based thereon. The Commissioner also pointed out that GSICPL failed to prove as fact that it is a financial institution owned or controlled by a foreign government.

In its Comment filed on June 21, 2010 (to the said Motion for Reconsideration), GSICPL argued that (1) there are sufficient legal bases for the conclusion of the Court in Division that GSICPL's income from investments in T-bonds is exempt from income tax under Section 32(B)(7)(a) of the NIRC, and (2) it was able to prove that it is a financing institution wholly owned by the Government of Singapore, and that its income from investments in T-bonds is exempt from income tax under the same provision.

In the assailed Resolution dated September 16, 2010, the Court in Division denied the Commissioner's Motion for lack of merit. It ruled that even though the filing of the Commissioner's Answer effectively revoked the BIR Ruling, such revocation cannot be given retroactive effect since it will prejudice GSICPL. The Court in Division also indicated that the latter was able to prove, through documentary evidence, that it is a financial institution wholly-owned and controlled by the Government of Singapore. The Certification issued by the Ministry of Finance of the Republic of Singapore[3] was duly notarized and certified by the Philippine Consul in Singapore as required under Sections 19, 24, and 30 of the Rules of Court.

Hence, this recourse before the Court *En Banc by way of* the instant Petition for Review filed by the Commissioner on October 21, 2010. In the Resolution dated November 18, 2010,[4] the Court *En Banc* ordered GSICPL to file its Comment hereto, within ten (10) days from receipt thereof. On December 3, 2010, GSICPL filed a Motion for Additional Time To File Comment, which was granted by the Court *En Banc*, giving GSICPL to file the said Comment until December 14, 2010.[5] GSICPL filed the same within such deadline.[6]

In the Resolution dated January 4, 2011,[7] the Court *En Banc* resolved to give due course to the instant Petition for Review. The parties were required to submit their respective Memorandum within a non-extendible period of thirty (30) days from receipt of the said Resolution.

The Commissioner filed her Memorandum on February 3, 2011; while GSICPL filed its Memorandum on February 7, 2011. On February 23, 2011, the Court *En Banc* deemed the instant case submitted for decision.[8]

Hence, this Decision.

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[3] Exhibit
[4] Docket, pp. 46 to 47.
[5] Resolution dated December 6, 2010, Docket, p. 52.
[6] Docket, pp. 53 to 68.
[7] Docket, pp. 70 to 71.
[8] Resolution dated February 23, 2011, Docket, pp. 107 to 108.

THE ISSUE

A sole issue was raised by petitioner for the resolution of the Court *En Banc*, viz:

> "WHETHER RESPONDENT SUFFICIENTLY PROVED THAT IT IS WHOLLY-OWNED AND CONTROLLED BY THE GOVERNMENT OF SINGAPORE."

Petitioner's Arguments

The petitioner-Commissioner argues that the purported Certification from the Ministry of Finance of Singapore is a letter under the category of "private writing" under the Rules of Court executed by Deputy Director Sharon Ang of the Ministry of Finance of Singapore. Allegedly, no foundation was laid to show that Sharon Ang is a public official of Singapore.

Furthermore, the Commissioner claims that GSICPL may not invoke BIR Ruling DA 130-02 in its bid to claim a refund because said Ruling is peculiar only to the requesting party; that a BIR Ruling is not a law and is more of an opinion given upon a taxpayer's request that may later on be revoked should the facts represented upon application prove to be contrary later on.

Lastly, the Commissioner asserts that claims for refunds are construed strictly against the taxpayer and in favor of the Government.

Respondent's Counter-Arguments

GSICPL contends that at the outset, the issues raised by petitioner in its Petition for Review are mere rehash of the arguments raised in the petitioner's Motion for Reconsideration in CTA Case No. 7726 which have already been judiciously weighed, discussed and disposed of by the CTA-Division in the Assailed Decision and Assailed Resolution.

According to respondent GSICPL, it did not rely solely on BIR Ruling DA 130-02 as legal basis for its claim that its income from investments in T-bonds is exempt from income tax under Section 32(B)(7)(a) of the Tax Code as the records of the case would show that, in addition to said BIR Ruling, it has cited numerous legal provisions and jurisprudence as basis for its position that its income from investments in T-Bonds is exempt from income tax, and consequently, from the FWT, particularly, Section 32(B)(7)(a) of the Tax Code and Section 2.57.5 of Revenue Regulations No. 2-98. GSICPL stresses that it was able to prove that it is a financing institution wholly-owned by the Government of Singapore, and that its income from investments in T-bonds is exempt from income tax under Section 32(B)(7)(a) of the Tax Code.

THE COURT EN BANC'S RULING

The authenticity of the Certification dated January 23, 2008 issued by the Ministry of Finance of the Republic of Singapore was judicially admitted by the Commissioner.

A perusal of the records of this case in CTA Case No. 7726 show that on the basis of the pre-trial proceedings held on April 25, 2008, GSICPL and the Commissioner executed and submitted their Joint Stipulation of Facts and Issues (JSFI) on May 19, 2008,[9] which pertinently provided as follows:

> "II
>
> The parties further agreed to stipulate on the following facts during the pre-trial conference on April 25, 2008, to wit:
>
> xxx xxx xxx

[9] Division Docket, pp. 110 to 114.

2. The Certification issued by the Ministry of Finance of the Republic of Singapore on January 23, 2008 stating that petitioner is wholly owned by the Government of Singapore is authentic.[10]"

The said JSFI was approved in the Resolution of the Court in Division dated May 21, 2008,[11] thus marking the culmination of the pre-trial process in CTA Case No. 7726.

In *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*,[12] the Supreme Court expressed the significance of the pre-trial and of the admissions made in a stipulation of facts thereat by the parties, to wit:

" Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as 'the most important procedural innovation in Anglo-Saxon justice in the nineteenth century.'

The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court:

SECTION 2. *Nature and purpose.* – The pre-trial is mandatory. The court shall consider:

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(d) The limitation of the number of witnesses;

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[10] Ibid, at p. 112
[11] Resolution dated May 21, 2008, Division Docket, p. 120.
[12] G.R. No. 157594, March 9, 2010.

(e) The advisability of a preliminary reference of issues to a commissioner;

(f) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(g) The advisability or necessity of suspending the proceedings; and

(h) Such other matters as may aid in the prompt disposition of the action. (Emphasis ours.)

The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. <u>Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof</u>." *(Underscoring supplied)*

As aforequoted, among the facts expressly admitted by the Commissioner and GSICPL in the JSFI is that: "The Certification issued by the Ministry of Finance of the Republic of Singapore on January 23, 2008 stating that petitioner is wholly-owned by the Government of Singapore is **authentic**."

Consequently, the Commissioner is bound by such an admission, which she could not eventually contradict in her Motion for Reconsideration of the assailed Decision, nor in the instant Petition for Review, by arguing that the said Certification "cannot be conclusive as to its contents", on the ground that none of the signatories thereof were presented on the witness stand to identify the same.[13] Apparently, the said Certification could not have been authentic and inconclusive as to its contents at the same time.

Notably, no evidence was presented by the Commissioner to show that she committed a mistake in making the said admission, much more, of a palpable one. In fact, it appears that the Commissioner have forgotten about the same since her main thesis is that the subject Certification falls under the category of "private writing" under the Rules of Court. Be that as it may, the Commissioner cannot claim that no such admission was made, since the records of this case show otherwise. Hence, the Commissioner cannot escape the binding effect of her judicial admission.

The admissibility of the Certification dated January 23, 2008 (Exhibit "B") was not timely objected to by the Commissioner.

Equally important is the fact that the Commissioner cannot now object to the admissibility of the Certification dated January 23, 2008, which was marked and offered as Exhibit "B" by GSICPL. Along with other exhibits of the latter, said Exhibit "B" was admitted in evidence by the Court in Division in its Resolution dated May 5, 2009,[14] without objection on the part of the Commissioner.

Section 36, Rule 132 of the Rules of Court provides:

> "SEC. 36. *Objection.*— Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

[13] Docket, p. 79. Division Docket, p. 569.
[14] Division Docket, pp. 491 to 492.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified." *(Emphasis supplied)*

Based on the foregoing, where the proponent offers evidence deemed by counsel of the adverse party as inadmissible for any reason, the latter has the right to object. Jurisprudence tells Us that the failure to object, when there is an opportunity to speak, operates as a waiver of the objection.[15] Thus, any objection on the admissibility of Exhibit "B" has long been waived by the Commissioner.

Consequently, the Court in Division cannot simply ignore said Exhibit "B".[16] Conversely, it was correct for the Court in Division to have relied on the same.

GSICPL did not rely solely on BIR Ruling DA 130-02. But even if it did, the same is of no moment since it was clearly established that GSICPL is wholly owned by the Government of Singapore, apart from such BIR Ruling.

In response to the Commissioner's argument that GSICPL may not invoke BIR Ruling DA 130-02 in its bid to claim a refund, GSICPL counter-argues that it did not rely solely on the said Ruling as legal basis for its claim.

We agree that GSICPL indeed did not rely solely on the said Ruling. Aside from the latter, it invoked, as precedents, two (2) separate cases[17] decided by this Court having the same title, *i.e.*, *Government of Singapore Investment Corporation Pte. Ltd. vs. Commissioner of Internal Revenue*.

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[15] *People of the Philippines vs. Ortiz, et al.*, G.R. No. 179944, September 4, 2009.
[16] Refer to *People of the Philippines vs. Yatco, et al.* [G.R. No. L-9181, November 28, 1955; 51 O.G. 6187 (1955)], wherein it was held that *"...if the ground for objection is known and not reasonably made, the objection is deemed waived and the court has no power on its own motion to disregard the evidence."*
[17] CTA Case No. 5568, February 10, 2000; and CTA Case No. 6745, June 6, 2008.

Moreover, nothing in the assailed Decision and Resolution indicate that the reason for granting the refund being sought by GSICPL is by virtue of BIR Ruling DA 130-02; rather, the assailed Decision was founded on the pieces of evidence presented entitling GSICPL to the income tax exemption under Section 32(B)(7)(a) of the NIRC of 1997. Thus, the invocation of said Ruling or the lack thereof, and the effect of the supposed revocation by the filing of the Commissioner's Answer in CTA Case No. 7726, did not have any bearing in the outcome of the case, as correctly found by the Court in Division.

In fine, the fact that GSICPL is wholly owned by the Government of Singapore was clearly established in this case. Thus, GSICPL's income from its investment in T-bonds comes under the purview of Section 32(B)(7)(a) of the NIRC of 1997, which provides as follows:

> "SEC. 32. *Gross Income.—*
>
> xxx 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**[18]:
>
> xxx 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 governments**, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments." *(Emphases supplied)*

Such being the case, We find no cogent reason to deviate from the finding of the Court in Division granting the refund claim of GSICPL.

[18] TITLE II- TAX ON INCOME.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision promulgated on April 29, 2010 and Resolution dated September 16, 2010 by the Court in Division, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice