REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

RURAL BANK OF COTABATO, INC.,
Petitioner,

-versus-

C. T. A. CASE NO. 4800

HONORABLE COMMISSIONER, BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 27 1994

x - x

D E C I S I O N

This is a petition for review filed by petitioner, Rural Bank of Cotabato, Inc., seeking a refund of income taxes for 1989 and 1990 and documentary stamp tax for the latter period, allegedly erroneously paid by reason of tax privileges granted to rural banks of which it is covered.

Petitioner is a banking corporation organized and operating under R. A. No. 720, as amended, with principal office in Cotabato City.

As alleged in its petition, then President Ferdinand E. Marcos issued Presidential Decree No. 2026 on February 03, 1986, restoring the tax privileges granted to rural banks thus amending for that purpose Section One of Presidential Decree No. 1955. By reason of said P. D. No. 2026, respondent Bureau of Internal Revenue issued Revenue Memorandum Circular No. 9-86, dated May 8, 1986, which it officially communicated to the Central Bank. The Central Bank in turn disseminated to all rural banks the text of said CB Revenue Circular and other pertinent information related thereto in Circular Letters numbered 86-17 and 86-18, both dated August 01, 1986.

Quoted hereunder is the pertinent portion of CB Circular Letter No. 86-17, dated August 1, 1986, addressed to all Rural Banks which quotes verbatim a letter of the Commissioner of Internal Revenue, dated June 23, 1986, to wit:

> "In reply to your letter dated April 22, 1986, please be informed that P. D. No. 2026 added paragraph (f) to the enumeration of several tax exemptions and privileges not abolished by PD No. 1955, in effect restoring all tax exemptions and/or preferential tax treatment previously enjoyed by rural banks prior to their abolition on October 15, 1984 (effectivity of PD No. 1955). PD No. 2026 is explicit that the tax exemption benefits which were restored by said decree shall apply to rural banks only whose net assets are less than P30,000,000 and the same shall only be enjoyed for a period of five (5) years from the date of its effectivity which is February 3, 1986, subject to further extension as may be recommended by the Minister of Finance. Accordingly, PD No. 2026 is a valid law and the restoration of the aforementioned tax

> exemptions and/or preferential tax privileges shall be effective only from and after February 3, 1986. (Revenue Memorandum Circular No. 9-86 dated May 8, 1986)."

Petitioner alleges that due to "honest inadvertence," it erroneously paid income taxes for 1989 and 1990 in the amounts of P5,215.65 and P7,856.95, respectively, plus P500.00 for documentary stamp tax in 1989.

On April 01, 1992, petitioner wrote respondent Bureau, through its Regional Office in Cotabato City, seeking a refund of said taxes for 1989 and 1990 in the total amount of P13,572.60 which it claims to have been erroneously paid, citing as legal basis therefor Presidential Decree No. 2026.

As no action was taken by respondent Bureau of petitioner's claim for refund, the instant petition was filed to protect itself from the two-year prescriptive period provided for in Section 230 of the National Internal Revenue Code (NIRC).

On May 26, 1992, Petitioner amended its petition to state that for the periods in question, that is, the years ended 1989 and 1990, petitioner had net assets of P680,891.82 and P567,706.96 respectively, as shown in its

Statements of Condition which were reported to the Central Bank of the Philippines, to show that said petitioner is covered by the tax-exemptions provided under P. D. No. 2026.

In his Answer to the Petition, respondent made a blanket denial of the allegations of the petition and, as part of his special and affirmative defenses, stated that petitioner failed to state any cause of action under Section 204 of the Tax Code and that petitioner failed to show on the face of its petition that the collection of the aforesaid tax liability in the amount of P13,572.60 is illegal and erroneous. Furthermore, petitions for tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.

As part of its evidence, petitioner presented the following documentary evidence to support its claim which were all admitted by the Court:

a) The Circular Letter of the Central Bank to all Rural Banks No. 86-17, dated August 01, 1986 (Exh. A).

b) Central Bank Circular Letter No. 86-18 (Exh. B).

c) Annual Income Tax Return for 1989 of the Rural Bank of Cotabato, Inc. (Exh. C).

d) Quarterly Income Tax Return ending March 31, 1989 (Exh. C-1).

e) Quarterly Income Tax Return ending June 30, 1989 (Exh. C-2).

f) Quarterly Income Tax Return ending September 30, 1989 (Exh. C-3)

g) Annual Income Tax Return ending December 31, 1990 (Exh. D).

h) Quarterly Income Tax Return ending March 31, 1990 (Exh. D-1).

i) Quarterly Income Tax Return ending June 30, 1990 (Exh. D-2).

j) Quarterly Income Tax Return ending September 30, 1990 (Exh. D-3).

k) Letter of petitioner, through counsel, to the respondent Bureau requesting for refund of taxes erroneously paid in the total amount of P13,572.60 (Exh. E).

Other than the foregoing, no documentary or testimonial evidence were formally offered by petitioner in support of its case on October 8, 1992.

Respondent waived his right to present evidence. He likewise failed to file a memorandum within the time given to him by the Court.

The only issue to be resolved in this case is whether or not under existing laws petitioner is entitled to a refund of taxes erroneously paid for the years in question.

It is not disputed that with the issuance of P. D. No. 2026 during the martial law years, more particularly on February 3, 1986, it added paragraph (f) to the enumeration of several tax exemptions and privileges not abolished by PD No. 1955, in effect restoring all tax exemptions and or preferential tax treatment previously enjoyed by rural banks prior to their abolition on October 15, 1984 (effectivity of PD No. 1955). Petitioner, a rural bank, with net assets very much less than the amount prescribed in said presidential decree is covered by these tax exemptions and privileges. This Presidential Decree was duly implemented by Revenue Memorandum Circular No. 9-86, dated May 8, 1986, which in turn was circulated to all rural banks by the Central Bank of the Philippines in its twin circulars numbered 86-17 and 86-18, both dated August 1, 1986, for their information and guidance.

As part of its evidence, petitioner presented its income tax returns for the years 1988 and 1989. Petitioner claims to have paid respondent Bureau as a basis for their claim for refund the amount of P2,141.86 corresponding to the first quarter ending on March 31, 1989; the amount of P2,357.65 corresponding to the first quarter ending March 31, 1990; and the amount of

P2,893.67 corresponding to the second quarter ending June 30, 1990.

We have scrutinized the evidence and have found none to prove that these amounts totalling P13,572.60 were allegedly erroneously paid to the respondent Bureau and for which the present judicial claim for such refund was filed. In its letter to the Commissioner of Internal Revenue through the Regional Director, Region II-A, in Cotabato City, seeking a refund of taxes erroneously paid, petitioner through counsel, did state certain RTRs and official receipts allegedly evidencing said payments for the years 1989 and 1990. However, said documentary evidence were not presented before this Court to support its petition for judicial refund at the proper time. The Annual Income Tax Returns for the years 1989 and 1990 only indicate the amount of taxes due, as the case may be, but do not indicate or state actual payment of such taxes.

The Rules of the Court in Rule 132 Section 34 thereof is quite clear that "the court shall consider no evidence which has not been formally offered" (Veran vs. Court of Appeals, 157 SCRA 438). Under this rule, evidence not formally offered in court will not be taken into consideration in disposing of the issues of a case (Martin, Revised Rules of Evidence, p. 589).

While petitioner in the case at bar allegedly marked and simultaneously offered Exhibits I to K-I, it appears that the same were introduced only through petitioner's memorandum, long after it has formally offered exhibits A to E inclusive which as earlier indicated were admitted by this Court. In this connection, it should be noted that the Court of Tax Appeals is a court of record, empowered to promulgate as it has promulgated, its rules and regulations pursuant to Section 8 of Republic Act No. 1125, for the conduct of its business, and as may be needed for the uniformity of its decision within its jurisdiction (please see Rules of the Court of Tax Appeals [RCTA]). Being a court of record like the Regional Trial Court (RTC), the Tax Court is required to conduct a formal trial where the parties must present their evidence to be taken into consideration in the decision of the case.

In fine, only evidence formally presented at the proper time shall be considered by this Court in the disposition of a case.

Actual payment of the taxes, as well as the date of payment, is material and relevant in the recovery of tax erroneously or illegally collected. As provided for in Section 230 of the National Internal Revenue Code (NIRC):

> "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.
>
> In any case, no such suit or proceeding shall be begun after the expiration of <u>two years from the date of payment of the tax</u> 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." [emphasis supplied]

Respondent in his Answer, as part of his special and affirmative defenses stated that petitioner failed to state any cause of action citing Section 204 of the Tax Code which provides:

> "Sec. 204. **Authority of the Commissioner to compromise, abate, and refund/credit taxes.**- The Commissioner may -

1. Compromise the payment of any internal revenue tax when -

   a. A reasonable doubt as to the validity of the claim against the taxpayer exists; or

   b. The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

2. Abate or cancel a tax liability, when -

   a. The tax or any portion thereof appears to be unjustly or excessively assessed; or

   b. The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except : (a) those already filed in court, and (b) those involving fraud.

The Commissioner of Internal Revenue may delegate his power to compromise internal revenue cases to the Deputy Commissioner and the Regional Directors, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated for the purpose.

3. Credit or refund taxes erroneously or illegally received 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. <u>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 years after payment of the tax or penalty</u>. [underscoring ours]

The formal statement of said operative facts to give petitioner the judicial relief it seeks were not in fact clearly and explicitly stated. Moreover, without the evidence of actual payment of said taxes, much less the time they were paid, this Court will have no way of reckoning the two-year prescriptive period provided for in the aforequoted provision of the NIRC for juridical purposes. What is more fatal is the fact that the proof of such erroneous payment and the purpose for which such payment was made is wanting.

WHEREFORE, herein petition for refund of taxes allegedly erroneously paid is hereby ***dismissed for lack of cause of action.***

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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