REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 5568

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 10 2000

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DECISION

This is a Petition for Review instituted by Petitioner praying for the refund of the amount of P16,788,863.88 allegedly representing the 25% final withholding tax on dividends erroneously paid to the Respondent covering the period September 1995 to October 1997.

It appears from the records of the case that Petitioner is a corporation duly organized and existing under the laws of the Republic of Singapore with office at 250 North Bridge Road #38-00 Raffles City Tower, Singapore 179101. It is wholly-owned by the Government of Singapore, with the Prime Minister and Senior Cabinet Members sitting as members of the Board of Directors. It is also authorized and mandated to open and operate the custody of current accounts as may be necessary for the safekeeping of assets and cash under its management (Exhibit A).

Petitioner alleges that it made numerous investments in shares of stocks in various Philippine Corporations from which it received cash dividends for the period September

1995 to October 1997. Petitioner entered into a Custodianship Agreement with Hongkong and Shanghai Banking Corporation (HSBC) whereby the latter, through its Manila Branch will act as the custodian bank to facilitate the settlement of the purchase and sale of Philippine shares of stock as well as the collection of the dividends received from the shares of stock (Exhibit C). Embodied in the Custodianship Agreement between Petitioner and HSBC are the other duties of HSBC in connection with its safekeeping function. Thus, HSBC, upon receipt of proper instruction from Petitioner shall (a) release or deliver the shares of stock to the buyer against receipt of payment therefor; (b) pay out money from the account of the Petitioner to the stockholder against receipt of the corresponding shares purchased; (c) collect and receive for Petitioner's account such dividends derived from the shares of stock under its custody (See Exhibit C).

For the period September 1995 to October 1997, Petitioner allegedly received cash dividends amounting to P67,155,450.92 from its investments in shares of stocks in various Philippine corporations. From these cash dividends, Petitioner's custodian bank HSBC and the various transfer offices of domestic corporations, erroneously withheld the 25% final tax amounting to P16,788,863.88. The Fund Received Schedule HSBC (Exhibit D) shows the gross dividends received by HSBC on behalf of Petitioner. It also shows the amount of tax withheld by both the transfer offices and HSBC which is always equivalent to 25% of the gross dividends received by Petitioner. Thus, when the transfer offices withheld only the 15% final tax, HSBC upon receipt of the dividends further withholds a 10% final tax to ensure that a total of 25% final tax was being withheld from Petitioner's dividend income (Pet's memorandum, CTA docket p.218).

Believing that it is exempt from the payment of the 25% withholding tax on the cash dividends, Petitioner, on October 6, 1997 filed a claim for refund with the Respondent in the amount of P16,788,863.88 representing the 25% final taxes withheld on the cash dividends allegedly remitted by Petitioner's custodian bank and various transfer offices for the period September 1995 to October 1997 (Exhibit E).

Respondent's failure to give immediate action upon the said claim prompted the petitioner to file the instant petition for review before this Court on December 23, 1997.

Respondent, in his Answer, claimed by way of Special and Affirmative Defenses that:

> 5. Petitioner's claim for refund is partially, if not totally, barred by prescription;
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> 6. Petitioner has not shown proof of actual payment and remittance to the Respondent's Bureau of the alleged withholding taxes withheld;
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> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund/credit;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 9. Well settled in the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation.

The vital issues needing ventilation in this case are:

a) Whether or not petitioner is exempt from the payment of final withholding tax on dividends in accordance with Section 28(b)(8)(A) of the Tax Code (now Section 32 (B)(7)(a) of the Tax Code of 1997)

b) Whether or not petitioner is entitled to the refund sought on the basis of evidentiary documents presented.

Petitioner presented various documentary evidence to substantiate its claim, to wit:

1.) Certification issued by the Ministry of Finance of the Republic of Singapore showing that petitioner is wholly owned by the Government of Singapore (Exh. A) with the attached certificate of Authentication (Exh. B0);

2.) Custodian Agreement between Petitioner and HSBC (Exh. C)

3.) Funds Received Schedule prepared by HSBC to prove that 25% final tax on dividends was withheld (Exh. D)

4.) Administrative Claim for Refund (Exh. E)

5.) Special Power of Attorney in favor of HSBC to pursue claim for refund (Exh. F) (with attached Certificate of Authentication (Exh. G)

6.) Annual Information Return of Income Tax Withheld for 1995, 1996 and 1997 (Exh. H, I, J)

7.) Various Monthly Remittance Return covering the month of September 1995 to October 1997 (exh. H-1 to H-4, I-1, to I-12; J-1 to J-10)

8.) Original Report and the Amended Report on the Procedure undertaken on the Verification of the 25% Final Tax Withheld prepared by the Independent Auditor (Exh. K and M)

9.) Various supporting documents showing the total amount of final taxes withheld by HSBC (Exhibits L-1-a-1 to L-18-a-9)

10.) Additional supporting documents for final taxes withheld on dividends by HSBC (Exhs. N-1-a-1 to N-3-a-4).

Petitioner anchors its claim for refund on Section 28 (b)(8)(A) of the former Tax Code (now Section 32 (B0(7)(a) of the Tax Code of 1997) which grants tax exemption for dividend income received from investment in the Philippine stocks and other domestic securities by financing institutions owned, controlled, or enjoying refinancing from foreign governments. For easy reference, Section 28 (b)(8)(A) of the former Tax Code is hereby quoted as follows:

> "Section 28. Gross Income. x x x
>
> (a) General definitions. x x x
>
> (b) Exclusion from gross income. – The following items shall not be included in gross income and shall be exempt from taxation under this title
>
> x x x x x x x x x
>
> (8) Miscellaneous items. –
>
> (A) Income received from their investments in the Philippines in loans, stocks, bonds, or other domestic securities, or from interest on their deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned and controlled, or enjoying refinancing from them, and (iii) international or regional financing institutions established by governments.
>
> x x x x x x."

At this point, it is vital for us to determine first and foremost whether Petitioner is truly owned by the Government of Singapore. This is important in order for us to know if they indeed fall within the coverage of the tax exemption, otherwise all our further discussion on the meritorious nature of the claim would be futile.

A perusal of the documentary evidence presented by the Petitioner would reveal that indeed the Petitioner is wholly-owned by the Government of Singapore, thus making the aforequoted provision of law on tax exemption applicable to the case at bar. This Court is convinced that the certification issued by the Director of the Ministry of Finance of Singapore (exhibit A) is genuine and was duly executed. True enough, said certification is duly acknowledged by a Notary Public in Singapore which acknowledgment is duly authenticated by the Philippine Consular Office (Exhibit B) in accordance with Section 24 of Rule 132 of the Revised Rules of Court in relation to 19 and 30 of the same Rules. Although we are very strict in admitting documents executed in a foreign country and acknowledged by a notary public in said foreign country, we can give credence to those kinds of documents only if there is an authentication issued by any Philippine Consular Office, its officer or deputy, proving its due execution. In a case decided by the Supreme Court, a document executed in a foreign country was admitted by the High Court upon showing of a Certification of Authentication. Thus,

> "Where the special power of attorney is executed and acknowledged before a notary public or other competent officer in a foreign country, it cannot be admitted in evidence in Philippine Courts, unless it is certified as such in accordance with the provision of Section 24 of this Rule by a Secretary of the embassy or litigation, consul-general, counsel, vice-consul, consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said document and authenticated by the seal of his office (Lopez vs. CA, et al., GR. No. 77008, December 29, 1987).

In the same vein, the certification of authentication issued by the Philippine consul in Singapore certifying the due execution of the document issued by Singapore's Ministry of Finance is sufficient to prove the validity and genuineness of said document.

Thus, on the basis of the above findings, we could safely conclude that Petitioner is a financing institution wholly-owned and controlled by the Government of Singapore and therefore legally exempt from the final tax on dividends.

We will now proceed with the examination of the other documents which support the claim for refund.

Records reveal that on August 4, 1998, this court commissioned an independent auditor in the person of Mr. Ruben R. Rubio to perform a special audit on petitioner's claim for refund. Mr. Rubio, after conducting the audit, came up with a report (Exh. K), dated October 14, 1998 stating that out of the total claim for refund in the amount of P16,788,863.88, only the amount of P15,616,554.00 has been verified. Later, on December 2, 1998, the aforementioned report was amended (Exh. M) when Petitioner was able to collate additional evidence for further audit by Mr. Rubio. Thus, from the original verified amount of P15,616,554.00, it was increased to P15,956,593.06.

After a painstaking examination of the evidence at hand, this Court agrees with the findings of the independent auditor. The amended certification prepared by the commissioned CPA is given weight as it is in order and consistent with the auditing procedure conducted by this Court. However, the final amount as found by the independent auditor should be reduced by P494,370.91 due to prescription pursuant to Section 230 of the Tax Code, as amended, in relation to Section 2 of Revenue Regulations No. 5-85, both provisions are quoted hereunder, thus:

> ***Section 230. Recovery of tax erroneously of 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.

> 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 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.
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> ***Sec. 2 of RR No. 5-85 - Monthly Return and Remittance of Taxes Withheld*** – Taxes deducted and withheld on:
>
> (i) compensation income,
>
> (ii) income payments subject to the creditable (expanded) withholding taxes, and
>
> (iii) income subject to final withholding taxes shall be remitted within ten (10) days after the end of each calendar month with the filing, of the appropriate returns.

Records show that petitioner filed its administrative claim for refund on October 6, 1997, (Exh. E) and the Petition for Review on December 23, 1997. It follows then that payment of final taxes prior to December 23, 1995 is barred by prescription. However, the Court noted that some final taxes withheld by transfer offices which fall due on October 1995 were paid and remitted only on January 25, 1996 (Exhs. L-2-a-33, L-2-a-36 and L-2-a-43). Hence, the date of payment of the tax that should be considered is January 25, 1996. It should be further noted that remittance and payment of final taxes withheld by Hongkong Shanghai Bank, being a large taxpayer, falls due on the 25th day after each calendar month pursuant to Sec. 1 of Revenue Regulations No. 18-93. Hence, when Hongkong Shanghai Bank remitted the payment for final taxes of petitioner for the month of November 1995 on December 26, 1995 (Exhs. L-3-a-15), the same is not yet barred by prescription.

Thus, this Court disallows the amount claimed which is barred by prescription. In sum, the present claim for refund should be granted in the reduced amount of P15,462,222.15, computed as follows:

Per independent CPA Findings		P15,956,593.06
Less: Court Exception		
(a) Barred by prescription		
- September 1995	P25,276.24	
- October 1995	399,687.60	
- November 1995	69,407.07	494,370.91
Total Amount Refundable		**P15,462,222.15**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED** in so far as those claims not barred by prescription are concerned. Respondent is hereby **ORDERED** to **REFUND** in favor of the Petitioner the reduced amount of P15,462,222.15, representing the 25% final tax withheld on dividend income earned by Petitioner on its stocks investments.

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