REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5146

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 1998

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate of alleged erroneously paid withholding tax on interest income derived from loan arrangements for calendar year ended December 31, 1992.

Petitioner is a domestic banking corporation duly organized and existing under the laws of the Philippines.

Petitioner alleges that on July 29, 1992 and August 31, 1992, Far East Bank and Trust Co. (FEBTC) availed of the interbank loan facility and secured from petitioner Equitable Banking Corporation (EBC) two separate loans, each amounting to ₱150,000,000.00. The maturity dates and the interest rates are as follows:

	Principal Amount	Interest Amount Net of Tax
Value Date: 7/29/92 Mat. Date: 8/31/92 15% for 33 days	₱150,000,000.00	₱1,650,000.00
Value Date: 8/31/92 Mat. Date: 10/01/92 16.5% for 31 days	₱150,000,000.00	₱1,705,000.00

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Petitioner further claims that upon maturity of the loans on August 31, 1992 and October 1, 1992, Far East Bank issued interbank loan repayment transfer tickets addressed to the Central Bank requesting that the demand deposit of the petitioner Equitable Bank be credited in the amounts of ₱151,650,000.00 and ₱151,705,000.00, respectively. The amounts credited in favor of the petitioner allegedly represent the principal amount of each interbank loan and the respective interests thereon as well as net of the 20% final withholding tax on interest income in the amount of ₱412,500.00 and ₱426,250.00, respectively (Exhs. A, A-1, A-2, E, E-1, E-2).

On October 26, 1992, petitioner booked a 20% withholding tax payable on its interest income and remitted the same to the respondent Bureau of Internal Revenue (Exhs. D, D-1 to D-12, inclusive), except the amount of ₱13,500.00 which was not remitted nor was included in the fourth quarter remittance of final withholding tax to the Bureau of Internal Revenue.

Accordingly, petitioner claims that it erroneously booked the 20% final withholding tax on interest income from the two (2) interbank loan transactions it extended to Far East Bank and Trust Co. (FEBTC) in the total amount of ₱825,000.00 and that the same was duly remitted to the respondent BIR despite the fact that the latter (FEBTC) has already deducted and withheld the 20% final withholding tax on the interest payments to petitioner.

To recover such alleged erroneously paid 20% final withholding tax, petitioner filed a formal written claim for refund or issuance of a tax credit certificate with the respondent BIR on February 10, 1993, invoking Section 230 of the National Internal Revenue Code (Exhibit G).

The apparent inaction of the respondent on the claim for refund prompted the petitioner to file this present judicial action on September 9, 1994 and to toll the running of the two-year prescriptive period.

Upon these facts, respondent advanced the following special and affirmative defenses:

> 1. That the petition does not state a cause of action as there is no allegation when the tax sought to be recovered was actually paid by Far East Bank, the alleged withholding agent of petitioner, assuming that petitioner erroneously booked the corresponding withholding tax, the remittance to the BIR will be made on October 26, 1994 as alleged in paragraph 5 of the petition - an event which is yet to happen;
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> 2. That petitioner has not shown that the tax sought to be refunded/credited was actually withheld and remitted to the BIR;
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> 3. That the letter-request for refund/tax credit is still under investigation;
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> 4. That, in an action for refund, the burden of proof is upon the taxpayer to establish

its right to refund and failure to sustain the burden is fatal to the action;

5. That claims for tax refund are construed strictly against the claimant, the same being in the nature of an exemption from taxation.

On February 28, 1995, petitioner filed a motion seeking to admit its amended petition for review in order to correct typographical errors in the original petition as well as to make the allegations thereon conform to the evidence presented during the trial. Said motion was granted by this Court in its resolution dated April 24, 1995 (p. 49, CTA records).

Respondent did not file an Answer to the amended petition for review.

The issue presented to us in this case is whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of ₱825,000.00 representing its alleged erroneously paid 20% final withholding tax on interest income derived from inter-bank loan transactions for calendar year ended December 31, 1992.

After a careful scrutiny of all the evidence presented before Us, We rule against the petitioner.

Petitioner failed to prove that Far East Bank and Trust Company (FEBTC), its alleged withholding agent, complied with the requirements insofar as the alleged 20% final withholding tax of petitioner's interest income is concerned.

Under Section 51 of the National Internal Revenue Code, withholding agents are required:

1. to file quarterly returns of taxes withheld;

2. to furnish each recipient a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee. For final withholding taxes, the statement should be given to the payee on or before January 31st of the succeeding year;

3. to submit an annual reconciliation statement of quarterly payments and list of payees and income payments.

In the case at bar, petitioner was only able to prove that it paid the 20% final withholding taxes on said loan transactions as shown by Exhibit "D". However, petitioner failed to prove that Far East Bank and Trust Company, its alleged withholding agent, also paid the 20% final withholding tax on the same transaction as alleged in its petition. Petitioner did not present the Quarterly Return of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trust/etc. (BIR Form 1745) of Far East Bank to show that the latter withheld the 20% final withholding tax to determine once and for all the issue of double payment. Without these documents, We have no way of knowing whether there was double payment. In addition, the written statement supposedly furnished by alleged withholding agent, FEBTC to petitioner as payee as aforementioned, was neither disclosed to respondent BIR nor exhibited to this Court. We are likewise not swayed by the claim of petitioner that in interbank loan transactions, the parties thereon only issue the Interbank Loan Repayment Transfer Ticket to evidence the payment of loan and interest as well as the withholding of tax on the latter. Such ticket merely suggests that the principal amount of loan plus interest and service charge is credited against FEBTC in favor of the demand deposit of petitioner Equitable Banking Corporation (EBC). It has nothing to show that FEBTC, as petitioner claims, withheld and remitted the 20% final tax to the Bureau of Internal Revenue (BIR). In conclusion, the evidence is not sufficient to prove double payment of the tax on interest income so as to entitle petitioner to the refund sought.

In an action for refund or tax credit, the taxpayer has the burden of showing that the taxes paid were erroneously collected and that failure to meet such burden is fatal to his cause as such claims are strictly construed against the claimant. The taxpayer has the burden of proof to show that it is entitled to the refund of the amount claimed because taxes are the very lifeblood of the nation (**Citibank N.A., Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 4258, April 1, 1994; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4686 and 4629, September 27, 1995; Caltex Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986; Philippine Tonan Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4892, November 6, 1995; Insular Lumber Co. vs. CIR, 104 SCRA 710; CIR vs. Rio Tuba Nickel Mining Corporation, 207 SCRA 549**).

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DISMISSED** for lack of evidence. Petitioner's claim for refund or issuance of tax credit certificate is **DENIED**. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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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