REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NDC PROVIDENT FUND, represented by its trustee, the NDC PROVIDENT FUND COMMITTEE OF TRUSTEES,
Petitioner,

- versus -

C.T.A. CASE NO. 5525

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 09 1999

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DECISION

This is a judicial claim for the refund of 20% final tax on interest income amounting to ₱917,584.58 which allegedly were illegally withheld and collected from the various income derived by the Petitioner from its deposits, money market placements and investments in treasury bills.

Petitioner is an employee's trust/provident plan established on November 1988 by the National Development Company ("NDC" for brevity) for the purpose of providing retirement, death, disability and separation benefits to the members of the plan. It is administered by its Trustee, the NDC Provident Fund Committee of Trustees, with office address at NDC Building, 116 Tordesillas Street, Salcedo Village, Makati City.

The facts are simple.

342

For the years 1994 to 1996, the abovementioned interest income of the Petitioner from its deposits, money market placements and investments in treasury bills was subjected to 20% final withholding tax, as follows:

	20% Final Withholding Tax			
Particulars	1996	1995	1994	Total
Savings Account				
Land Bank	272.13			272.13
DBP	364.81	1,111.36	286.86	1,763.03
	636.94	1,111.36	286.86	2,035.16
Investments				
LBP T-bills	176,496.55	202,647.37	140,088.58	519,232.50
LBP Special Savings Account (SSA)			1,555.71	1,555.71
	176,496.55	202,647.37	141,644.29	520,788.21
BSP Fixed Term Deposit	92,594.52	139,717.47	162,449.22	394,761.21
Grand Total	269,728.01	343,476.20	304,380.37	917,584.58

On July 22, 1996, Respondent, through BIR Ruling No. DA-265-96, duly approved NDC's request for tax exemption from payment of income tax pursuant to Section 53(b) of the Tax Code, as amended (Exhibit C), the pertinent portion of which is hereby quoted, to wit:

> In view thereof, this Office is of the opinion as it hereby holds that the NDC Provident Fund is an employees' trust exempt from income tax under Section 53(b) of the Tax Code, as amended and therefore, it need not file an income tax return; and that the income of the trust fund from its investments are exempt from income tax, provided, that in its investment activities, no part of the corpus or income of the fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees or their beneficiaries. Moreover, the National Development Company Provident Fund is no longer

243

> subject to the 20% final tax on interest and/or yield on deposit substitute instruments and on interest on its Philippine Currency bank deposits. (CIR vs. GCL Retirement Plan, GR No. 95022, March 23, 1993)

Armed with the above-mentioned ruling, Petitioner filed with the Appellate Division of Respondent's Bureau on February 14, 1997 a claim for refund amounting to ₱950,275.81 covering the years 1994 to 1996 (Exhibit "N"). Although it was only approved as a tax-exempt provident fund on July 22, 1996, Petitioner contends that pursuant to Revenue Regulations No. 1-83, its tax exemption privilege retroacts to the effectivity of the provident fund. The claim was eventually referred to Respondent's Revenue District Office No. 50 located at Makati City, Metro Manila for factual investigation. Subsequently, on April 4 and 17, 1997, Petitioner filed with the Revenue District Office No. 50 an amended claim for refund in the amount of ₱917,584.58 representing the actual sum withheld from its earnings (Exhibit "Q").

On April 22, 1997, however, Petitioner instituted the instant Petition for Review allegedly on account of Respondent's inaction on its claim and failure to conduct any factual investigation.

At bar, Petitioner reasserts its stance *a quo*. On the other, Respondent interposes, *inter alia*, the following special and affirmative defenses, to wit:

> 8. Petitioner's claim for refund has already prescribed;

9. Republic Act No. 4917 and Respondent's letter dated July 22, 1996 (Annex "B") contained built-in conditions which require continuous observance by the petitioner, hence, subject to routine check-ups and investigation by the respondent for possible violations which may result to the nullity of the tax exemption granted;

10. The NDC Provident Fund (the "Plan") Rules and Regulations was approved only on July 22, 1996 by the respondent, hence, the tax exemption privileges under the Plan commenced effectively only from that date and even, if granted, for the sake of argument, that the tax exemption privileges are retroactive, Revenue Regulations No. 1-83 cannot be made to apply in the instant case since the petitioner's Plan does not indicate its date of effectivity, so, there is no basis for retroactive application of the tax exemption privileges;

x-x-x x-x-x x-x-x

12. The exemption from withholding on interest income from bank deposits and yield from deposit substitute and money market placements earned by petitioner has already been withdrawn by Presidential Decree No. 1959 which took effect on October 15, 1984 and thus, repealing or amending the provisions/benefits relied upon by the petitioner in Revenue Regulations No. 4917 (sic);

x-x-x x-x-x x-x-x

The issues having been joined, this Court is confronted with the following issues, to wit:

1. Whether or not the instant claim has prescribed;

2. Whether or not Presidential Decree No. 1959 has repealed or amended the benefits granted by Republic Act No. 4917;

3. Whether or not BIR Ruling No. DA-265-96 retroacts to the effectivity of the NDC Provident Fund pursuant to Revenue Regulations No. 1-83;

345

4. Whether or not Petitioner has proven the factual elements of its claim for refund.

Anent the first issue, this Court finds the claim of the Petitioner for the year 1994 as totally prescribed. The Quarterly Return of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trust/Etc. (BIR Form No. 1745) covering the last quarter of calendar year 1994 was filed on January 25, 1995 and it shows through its machine validation that final income taxes withheld were remitted on the same day. When reckoned from the date of institution of the present judicial action, by way of a Petition for Review, on April 22, 1997, the portion of the claim covering the year 1994 has been filed beyond the peremptory two-year period provided in Section 230 of the Tax Code, as amended, for the filing of a timely judicial claim for refund. The other portion of the claim covering the period 1995 up to 1996, however, are still clearly within the said two-year peremptory period. It is observed that the quarterly return for the first quarter of 1995 was filed on April 25, 1995, hence, making it within the two-year period.

As regards the second issue, this Court is quite amazed by the adamant insistence of the Respondent to invoke Presidential Decree No. 1959 as having amended or repealed the benefits granted under Republic Act No. 4917 and Revenue Regulations No. 1-83. Respondent's continued

346

position on this matter bespeaks of disrespect and unwarranted defiance of the final decision of the Honorable Supreme Court in **Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, G.R. No. 95022, promulgated on March 23, 1992, 207 SCRA 487,** over which Respondent Commissioner was himself the petitioner therein. In said case, the effect of Presidential Decree No. 1959 in relation to Republic Act No. 4917 had been specifically dealt with, thus:

> The deletion in Pres. Decree No. 1959 of the proviso regarding tax exemption and preferential tax rates under the old law, therefore, can not be deemed to extend to employees' trusts. Said Decree, being a general law, can not repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Republic Act 1983, which excepted employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (Villegas v. Subido, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

Adding absurdity to the preceding legal *faux pas* committed by the Respondent, BIR Ruling No. DA-265-96 issued on July 22, 1996 by his Bureau has qualified Petitioner as tax exempt under Section 53(b) of the Tax

Code, as amended, citing the GCL Retirement Plan case, *supra*. Such ruling has been referred to his attention in the administrative claim for refund filed below by Petitioner's trustee (Exhibit N) and is being alleged in the instant Petition.

Concerning the third issue, this Court is of the firm belief that BIR Ruling No. DA 265-96 retroacts to the establishment of herein Petitioner effective November 1, 1988 (subpar. 1, Exhibit C) due to the fact that the exemption privilege under Section 53(b) has been in existence at the time of said establishment. With the approval of the Respondent's Bureau that Petitioner has met the conditions laid down in Section 53(b) and absent any showing that such conditions were different before the approval, this Court is inclined to give retroactivity to the tax exemption status of the Petitioner. In fact, a close examination of the footnotes indicating amendments to the rules and regulations governing Petitioner (Exhibit B at pp. 2-4, 6, 8 & 9) shows that changes introduced in the provisions thereof were not related to the requirements set forth in Section 53(b) of the Tax Code, as amended, thus, ensuring the existence of such conditions for tax exemption since Petitioner's establishment in 1988. Besides, the tax exemption privilege of a person relates to the effectivity of the law under which said person becomes entitled to such privilege (**V.G. Sinco Educational Corporation vs. Collector of Internal Revenue, Civil Case No. 2929, May 20, 1955**).

Petitioner's reliance on the retroactive provisions of Revenue Regulations No. 1-83 is misplaced, however, on account of the fact that it is anchored on the provisions of Republic Act No. 4917 which makes retirement benefits of employees of "private firms" exempt from tax. The revised Charter of NDC reveals that it is a government corporation (Exhibit A), hence, its employee-members are those of the government and not from private firms. Petitioner is thus disqualified from availing of the tax exemption privilege granted by Republic Act No. 4917 as implemented by Revenue Regulations No. 1-83.

Going into the last issue, this Court finds Petitioner to have almost entirely failed to prove the factual elements of its claim for refund, except for a miniscule amount.

A review of the documentary and testimonial evidence presented shows that Petitioner is claiming refund of final taxes that have been withheld from interest income earned from current and savings accounts maintained in Land Bank of the Philippines and the Development Bank of the Philippines ("LBP" and "DBP", respectively, for brevity); and investments in Land Bank of the Philippines' treasury bills and high yield savings

349

deposit account or special savings account as well as in *Bangko Sentral ng Pilipinas* fixed term deposits.

This Court takes note peculiarly of the fact that except for the current and savings accounts in DBP and LBP (Exhibits D & E, inclusive), the bulk of the above savings and investments of the Petitioner were not deposited or invested in its account name but in the name of NDC.

With respect to its investments, Petitioner merely presented the certifications of Mr. Jolan V. Wedingco, Manager of the Treasury Department of NDC (Exhibits F-1, G-1 and H-1) and the testimony of Ms. Ana L. Garing in the hearing of October 9, 1997 in proving that out of the total investments made by NDC in LBP and *Bangko Sentral ng Pilipinas*, certain portions thereof belong to the Petitioner. No other proof was adduced in evidence to establish by real evidence the joint participation of the money or asset of the Petitioner together with that of NDC. As such, this Court gives scant probative value to said certifications and testimony for the reason that they are all self-serving and imbued with partiality of interest.

Records reveal that under the Trust Agreement executed by NDC, as trustor, to Petitioner's Committee of Trustees (Exhibit B-1), the names of Mr. Jolan V. Wedingco and Ms. Ana L. Garing appear as members of said

350

committee. In effect thus, Mr. Wedincco is certifying and Ms. Garing is testifying under oath something that is personal, the two of them being a party in interest to both NDC and herein Petitioner. They may be considered biased witnesses. Their testimonies taken alone without corroborative evidence, documentary or otherwise, may be considered self-serving.

This Court greatly wonders as to why Petitioner opted not to submit documentary evidence of the existence and the flow or transfer of its money placed in investments jointly with that of NDC. Surely, its invested money which is well over ₱150,000,000.00 as shown in the certifications, has to be duly recorded and accounted for separately in its name even though it has been conglomerated with the account of NDC.

> Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co., Inc. v. Commissioner of Customs, 44 SCRA 122). Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim (Farrington v. Tennessee & Country Shelby, 95 U.S. 679,686; Manila Electric Co. v. Vera, L-29987, Oct. 22, 1975; Manila Electric Co. v. Tabios, L-23847, Oct. 22, 1975, 67 SCRA 351). [Towa Industry, Inc. v. Commissioner of Internal Revenue, CTA Case no. 5219, May 13, 1997]

351

In contrast to the above findings, Petitioner's savings account maintained in DBP were duly supported by a photocopy of its passbook showing daily transactions covering the period October 8, 1992 to June 4, 1996 (Exhibit D, inclusive) while its current and savings accounts in LBP were likewise duly supported by statements showing transactions made for the period August 31, 1996 to September 30, 1996 (Exhibits E, inclusive).

Out of the entire claim of the Petitioner, therefore, what remains refundable is the portion duly supported by Exhibits D and E, inclusive.

Taking into account Petitioner's prescribed claim for 1994, the refundable amount of final taxes withheld on Petitioner's interest income from savings deposits with DBP and LBP is computed as follows:

Savings Account with Dev't. Bank of the Phils.	Exh.	Amount of Claim	Amount Prescribed	Amount Refundable
1994	D-10 to D-13	₱ 286.86	₱ 286.86	₱
1995	D-14 to D-17	1,111.36		1,111.36
1996	D-18	364.81		364.81
		₱1,763.03	₱ 286.86	₱1,476.17
Land Bank of the Phils.				
1996	E-2	₱ 272.13	₱ -	₱ 272.13
Total		₱2,035.16	₱ 286.86	₱1,748.30

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.**

352

Accordingly, Respondent is hereby **ORDERED** to **REFUND** the amount of P1,748.30 to the Petitioner immediately.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

353