Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB Case No. 665
(CTA Case No. 7224)
Members:
ACOSTA, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
JAN 05 2012 9:15 a.m.

x- -x

DECISION

CASANOVA, J.:

Before Us is a Petition for Review, filed by petitioner-Philippine Airlines, Inc. seeking the review and rectification of the Decision[1] (the "Assailed Decision") dated May 11, 2010 and the Resolution[2] dated July 19, 2010 (the "Assailed Resolution") of the CTA Former Second Division and praying that:

> a. The Certifications and Certificates of Final Tax Withheld at Source (BIR Form No. 2306) issued by the various depository banks to the petitioner, be considered sufficient to prove the amount of final taxes withheld from the interest income of the petitioner on its peso and dollar deposits, and the remittance of said withheld final taxes to the BIR;

[1] Division Docket, pp. 891-894
[2] Ibid, pp. 958-959

b. The petitioner's claim for refund of 20% final taxes amounting to Php80,212.31, as well as, the 7½% final taxes amounting to USD24,684.54, both withheld during the year 2003 from the interest income of petitioner in its peso and dollar deposits, respectively, have not yet prescribed and should be granted.

The facts of the case[3], as found by the Former Second Division, are as follows:

"Petitioner-PAL is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 9th Floor, PAL Center, Legaspi Village, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including 20% final income tax on interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations, as well as, 7½% final income tax on interest income derived by a domestic corporation from a depository bank, under the expanded foreign currency deposit system, imposed under Sec. 27(D)(1) of the NIRC, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On February 28, 2005, petitioner PAL's VP-Financial Services, Marianne Raymundo, filed with the office of the respondent, a written claim dated February 24, 2005, for refund of final withholding taxes on petitioner PAL's interest on its Philippine Peso and U.S. Dollar deposits for the calendar year 2003, amounting to P203,260.34 and USD62,311.89 respectively.

For failure of respondent to act on its claim and in order to toll the running of the prescriptive period, on April 21, 2005, petitioner PAL filed the instant Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, averred that:

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[3] Ibid, pp. 892-896

'4.) Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

5.) To support its claim, it is imperative for petitioner to prove the following, *viz*:

a. That the Final Withholding Taxes levied upon petitioner for taxable year 2003 amounting to Php203,260.34 and USD62,311.89, have been remitted to the Bureau;

b. That petitioner's administrative and judicial claims for tax credit or refund of the alleged erroneously withheld final taxes was *(sic)* filed within two (2) years after the close of the taxable month when the amounts were deducted in accordance with Section 229 of the Tax Code, as amended;

c. That petitioner's earnings which were subjected to the Final Withholding Tax arose primarily from its conduct of the trade or business from which its alleged basis for exemption lies;

d. That since the petitioner has been claiming refund of the alleged erroneously withheld final taxes, it must be able to unequivocally show that it has included said interest incomes in its returns in the computation of its Gross receipts for purposes of the computation of the 2% Franchise Tax, or as part of its income in the corporate income tax returns, whichever is applicable to petitioner for taxable year 2003;

e. That petitioner duly paid the taxes due from it under existing laws;

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Petitioner PAL presented Evelyn Taghap, Wilfredo Quijencio, Cyril Bandiola, Mary Evangeline Cruz, Carmencita Tan, Lucia Sietereales, Antonio Santos, Cecille Reyes, Bienvenido Nieto and Minna Tablaza, as witnesses, and documentary evidence, marked as *Exhibits "A" to "QQ"*, inclusive of their submarkings, which were admitted by the Court, except for the provisionally marked *Exhibits "K" and "K-1"* for failure to submit the duly marked documents and

> to present the original copies for comparison, and *Exhibits "L-1", "L-2", "M-1" and "M-2"* for failure to mark them during trial.
>
> On the other hand, on April 20, 2009, counsel for respondent manifested that he is waiving his right to present evidence.
>
> Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Considering respondent's Memorandum filed on July 14, 2009 and petitioner PAL's Memorandum filed on July 20, 2009, the case was deemed submitted for decision on July 27, 2009."[4]

On May 11, 2010, the CTA Former Second Division promulgated its Decision the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the petition is hereby **DENIED**, and accordingly **DISMISSED**.
>
> **SO ORDERED**."

On May 31, 2010, petitioner filed a Motion for Reconsideration[5] of the Assailed Decision. In its Motion, petitioner prayed that the Decision of the CTA Former Second Division, promulgated on May 11, 2010, be reconsidered and that its claim for refund of 20% final taxes amounting to USD7,011.78, withheld during the year 2003 from its interest income by its various depository banks on its peso and dollar deposits, be granted.

Petitioner's Motion for Reconsideration was subsequently denied, for lack of merit, in a Resolution[6] promulgated on July 19, 2010.

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[4] Ibid, pp. 893-896
[5] Ibid, pp. 895-947
[6] Ibid, pp. 958-959

On August 23, 2010, petitioner filed the instant Petition for Review[7] while respondent filed her Comment (Re: Petition for Review dated 20 August 2010)[8] on October 5, 2010.

In a Resolution[9] dated January 27, 2011, the case was deemed submitted for resolution.

Petitioner raised the following issues for this Court's resolution:

I.

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE 20% AND 7½% FINAL TAX PRAYED FOR AMOUNTING TO PHP3,621,067.51.

II.

WHETHER OR NOT THE AFOREMENTIONED AMOUNT BEING CLAIMED BY PETITIONER REPRESENTING THE TOTAL AMOUNT OF 20% AND 7 ½% FINAL INCOME TAXES WITHHELD FROM THE INTEREST INCOME OF PAL FOR THE PERIOD JANUARY 2003 TO DECEMBER 2003, ARE PROPERLY DOCUMENTED.

III.

WHETHER OR NOT THE AFOREMENTIONED AMOUNT BEING CLAIMED BY PETITIONER HAD BEEN REMITTED TO THE BIR.

IV.

WHETHER OR NOT PETITIONER COMPLIED WITH THE PROVISIONS OF SECTIONS 204(C) AND 229 OF THE TAX CODE ON THE PRESCRIPTIVE PERIOD FOR CLAIMING TAX REFUND/CREDIT.

Petitioner summed up the foregoing issues to the principal issue of "whether or not petitioner PAL is entitled to a refund or issuance of a TCC in the

[7] En Banc Rollo, pp. 5-82
[8] Ibid, pp. 161-170
[9] Ibid, pp. 177-178

aggregate amount of P3,621,067.51, representing the 20% and 7½% final income tax erroneously withheld by petitioner PAL's various depository banks from its interest income on its U.S. Dollar deposits and Philippine peso deposits for the period January to December 2003."[10]

Petitioner contends that "the Court in division erred in declaring that to be entitled to a refund of the final income taxes withheld from its interest income on its peso and dollar deposits, it is not sufficient for petitioner to present the certifications and certificates of final tax withheld at source (BIR Form No. 2306) from the various banks. Petitioner must present supporting documents to prove that the amount being claimed for refund had in fact been remitted to the BIR".

Respondent, on the other hand, argues that the previous preferential tax rate enjoyed by petitioner must give way to the provisions of the NIRC of 1997 and pertinent regulations thereto; that interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system is subject to a final income tax at the rate of 7½% in accordance with Section 27(D)(1) of the NIRC of 1997; that claims for refund are construed strictly against the taxpayer; that, without supporting documents to prove the amount had actually been remitted to the BIR, the exact amount subject of the claim for refund cannot be determined; and, that petitioner is barred from introducing additional evidence after a Decision has been rendered.

After a careful and thorough evaluation and consideration of the records as well as the arguments of both parties, the Court *En Banc* finds merit in petitioner's contention.

[10] Petition for Review, par. 6, Ibid, p. 9

As correctly pointed out by petitioner, We had, in a number of cases[11], ruled that proof of actual remittance of the taxes withheld is not necessary in a taxpayer's claim for refund of its unutilized creditable withholding taxes. This is in consonance with the ruling of the Supreme Court in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[12], where it was held that these three (3) conditions must be established/met for the grant of a claim for refund of creditable withholding tax (CWT), to wit:

> "(1) the claim is filed with the CIR within the two-year period from the date of payment of the tax.
>
> (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and
>
> (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom."

Thus, in the case of CIR vs. F.F. Cruz & Co., Inc.[13] We had ruled as follows:

> "In this regard, the document which may be accepted as evidence in compliance with the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of tax withheld and the nature of the tax paid. A perusal of the contents of the subject

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[11] CTA EB No. 296, Commissioner of Internal Revenue vs. Mitsubishi Motors Philippines Corporation, December 18, 2007; CTA EB No. 372, Commissioner of Internal Revenue vs. F.F. Cruz and Company, Inc., June 12, 2008; CTA EB No. 407, Commissioner of Internal Revenue vs. Roxas Land Corporation, February 18, 2009; CTA EB No. 419, Commissioner of Internal Revenue vs. Singapore Airlines Cargo PTE,
LTD., October 2, 2009

[12] G.R. No. 155682, March 27, 2007

[13] Supra, Note 10

Certificates (BIR Form No. 2307, formerly Form 1743-750) would readily show that the Certificates of such documents, complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

Additionally, it is worthy to mention at this point, that **proof of actual remittance by respondent is not even necessary to prove withholding and remittance of taxes to petitioner**. (Emphasis supplied) Section 2.58.3(B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority.

Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, being the payee in this case, has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld At Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.

Taken collectively, We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to present testimonial evidence of the withholding agent (payor) who made the entries in said certificates and to establish actual remittance by the withholding agent (payor) to the BIR." (Emphasis supplied)

Moreover, in the most recent case of Commissioner of Internal Revenue vs. Asian Transmission Corporation[14] the Supreme Court held that:

> "At any rate, the CIR is correct in stating that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be refunded is correct. In this case, however, the CTA-First Division and the CTA-*En Banc* uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of P27,325,856.58. The Court finds no cogent reason to rule differently. As correctly noted by the CTA-*En Banc*:
>
> > x x x proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3(B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax

[14] G.R. No. 179617, January 19, 2011

> Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR."

While the afore-quoted decisions involve a claim for refund of creditable withholding tax, We believe that the same, as well as the three (3) conditions laid down by the Supreme Court in the Banco Filipino case may, likewise, be applied in the instant case considering that a final withholding tax (FWT) is of the same genre as creditable withholding tax (CWT). This is clear under Revenue Regulations No. 2-98 where both provisions of FWT and CWT appear under the subject/heading "WITHHOLDING OF TAX AT SOURCE".

Thus, consistent with Our ruling in the case of CIR vs. F.F. Cruz & Co., Inc., and the recent Supreme Court decision in the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*, We maintain that proof of actual remittance of the taxes withheld by the withholding agent (payor) to the BIR, is not necessary to sustain taxpayer-payee's claim for refund of its final withholding taxes.

We, therefore, reiterate that pursuant to Section 2.58.3(B) of Revenue Regulations 2-98 proof of remittance is the responsibility of the withholding agent.

Nevertheless, the instant Petition must still fail.

Pursuant to the provisions of Sections 204(C)[15] and 229[16] of the National Internal Revenue Code of 1997, petitioner must file its administrative and judicial claims for refund or issuance of tax credit within two (2) years from the date of payment of the tax. Also, Section 2.58 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-01, provides that the withholding tax return shall be filed and the corresponding final tax remitted within fifteen (15) days after the end of each month, except for December which shall be filed on or before January 20 of the following year.

Since the administrative claim and the Petition for Review were filed on February 28, 2005 and April 21, 2005, respectively, petitioner is, thus, barred

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[15] **SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** **-** The Commissioner may – xxx. **(C)** Credit or refund taxes erroneously or illegally received or 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. 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 (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: *Provided*, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.

[16] **SEC. 229.** ***Recovery of Tax Erroneously or 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 excessively 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 filed after the expiration of two (2) 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 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.

from claiming refund of the final taxes withheld for the months of January, February, and March 2003, which were purportedly remitted on February, March and April of the same year.

In the Summary of Claims-Final Withholding Taxes for the year 2003[17], the amount of P121,964.09 represents 20% final taxes withheld by JPMorgan Chase Bank for the period January to March 2003. Thus, the total amount had already prescribed.

With regard to the final taxes withheld by China Banking Corporation, HSBC, and Land Bank of the Philippines, petitioner did not submit the monthly or quarterly breakdown of the final taxes withheld for the year 2003. Thus, it cannot be ascertained from the Certificates of Final Income Tax Withheld alone how much of the 7½ and 20% final taxes withheld had not yet prescribed.

WHEREFORE, premises considered, the instant Petition for Review dated August 20, 2010 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[17] Exhibit "A-2"

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice