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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS
as Trustee of the PAL Pilots
Retirement Benefit Plan,
Petitioner,

-versus- C.T.A. CASE NO. 4217

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

10/22/92

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D E C I S I O N

This petition for review seeks the recovery of the total amount of P4,099,489.30 representing the final withholding tax on interest of bank deposits and yield of deposit substitute for taxable years 1985 and 1986 allegedly withheld by respondent erroneously and illegally.

On May 30, 1972, the Philippine Airlines, Inc. established the PAL Pilots Retirement Benefit Plan to provide a fund for the retirement, death and disability benefits of its employees. The said retirement plan qualified as a reasonable retirement benefit plan within the meaning of R.A.

No. 4917 pursuant to the letter of the former Commissioner of Internal Revenue on September 12, 1973. Petitioner was duly appointed trustee of the funds of the PAL PIlots Retirement Benefit Plan. Pursuant to the trust agreement, petitioner deposited and invested the funds of the retirement plan in savings and time deposits, money market and various securities with various banking and financial institutions. For the years 1985 and 1986, these deposits and investments earned income in the amount of P12,669,892.99 and P16,883,417.59, respectively. The corresponding withholding taxes were withheld on these earnings in the total amount of P1,825,483.78 and P2,274,005.52 for the years 1985 and 1986, respectively or a total of P4,099,489.30.

On December 29, 1987, petitioner through counsel, sent a letter to respondent demanding the refund of the amount of P1,825,483.78 covering its 1985 withholding taxes and at the same time filed a petition for review with this Court in order to meet the two-year prescriptive period under Section 230 of the Tax Code. Another claim for refund letter was sent by petitioner on February 19, 1988 demanding from respondent the refund of the amount of ₱2,274,005.52 covering its 1986 withholding tax. On February 26, 1988, petitioner amended the petition for review filed earlier by including the 1986 withholding tax for its claim for refund.

In its answer, respondent admitted some material allegations of the petition but denies some facts such as the filing of the claim within the two-year period, the illegality of the claim. As special and affirmative defenses, however, respondent contended that the retirement plan which enjoys tax exemption under Sections 21(d) and 24(cc) of the NIRC were withdrawn by implied repeal of these two sections by P.D. No. 1959. Respondent also argued that the case relied upon by petitioner, GCL Retirement Plan v. Commissioner of Internal Revenue (C.T.A. Case No. 3888, Dec. 15, 1988) wherein this Court ruled that employees trust are tax exempt, is still under review by the Supreme Court in G.R. No. L-77097.

The issues submitted for resolution of this Court are as follows:

(1) Whether or not subject claim for refund has already prescribed;

(2) Whether or not petitioner has sufficiently proven the fact of withholding taxes and payment of the same to the Bureau of Internal Revenue as required by law; and

(3) Whether or not the income tax exemption granted to private retirement benefit plan has already been revoked by Presidential Decree No. 1959.

On the first issue, the records of the case show that on December 29, 1987, petitioner filed with the Bureau of Internal Revenue the claim for refund covering its alleged 1985 erroneously withheld taxes in the total amount of P1,825,483.78. On the same date, petitioner also filed a petition for review with this Court covering the said 1985 erroneously withheld taxes. On February 16, 1988, petitioner filed with the Bureau of Internal revenue the claim for refund covering its alleged 1986 erroneously withholding tax in the amount of P2,274,005.52. Consequently, it amended its petition for review to include its 1986 claim for refund and filed the same with the Court on February 26, 1988.

The pertinent provisions of the National Internal Revenue Code applicable on this particular issue are as follows:

Section 292 (now Sec. 230). *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 sum alleged to have been collected without authority, or of 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.
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> 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. (Underscoring supplied.)

and

Section 295 (now Sec. 204). *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* -

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> (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. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner of claim for credit or refund within two years after the payment of the tax or penalty. (Underscoring supplied.)

Clearly pursuant to said provisions of law, recovery of tax erroneously or illegally collected must be done within two years from the date of payment of the tax in question by filing a timely claim for refund with the Commissioner of Internal Revenue and instituting a suit or proceeding in court within the said period of time. In the case of final withholding tax as in the instant case, pursuant to Section 51(a) of the National Internal Revenue Code, the filing of the return and the payment of the corresponding taxes withheld should be made within 25 days from the close of each calendar quarter.

The records show that the petitioner filed its claim for refund and the instant petition for review on December 27, 1987. Inasmuch as the payment of withholding taxes has to be done on a quarterly basis, only the claim for refund of petitioner for the period starting the last quarter of 1985 remains valid and subsisting. The recovery of taxes paid for the first, second and third quarters of 1985 have prescribed. Hence, for the year 1985, petitioner may validly claim for refund only payments of withholding taxes made during the last quarter of the said year. Consequently, the certification of withholding marked Exh. "J" issued by Hongkong Bank covering the period from June 1985 to August 1985 in the total amount of P168,830.45 has already prescribed. What seems to be a valid claim is the amount of P494,717.35 covered by the certification dated February 21, 1990 issued by BPI Credit Corporation marked Exh. "H". No other certification or statement of withholding has been presented by petitioner to cover its 1985 claim for tax refund except these two documents.

On the second issue of whether or not petitioner has sufficiently established or proven its claim for refund, this Court believes that petitioner failed to prove its claim as required by law. The burden of proof is on the petitioner to present evidence on the facts in issue necessary to establish his claim. The applicable provisions of law aside from Section 54(a) (now Sec. 51(a)) which requires the filing of quarterly return are Sections 54(c) and (d) of the Tax Code (now Sec. 51(c) and (d)).

Pursuant to said Section 54(c) a written statement of income payments made and taxes withheld shall be furnished each recipient by the withholding agent simultaneously upon payment of the withholding tax at the request of the payee. In case this is not requested by the payee simultaneously upon withholding, the statement "should be given to the payee on or before January 31 of the succeeding year". Another related provision of law which will prove the fact of withholding and income payments, is the requirement under Section 54(d) of the same Code for the withholding agent to file an annual return containing a reconciliation statement of quarterly payments, list of payees and income payment. In case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year.

In other words, pursuant to said provisions of law, the fact of withholding and payment of the withholding tax to the Bureau of Internal Revenue may be proven by presenting copies of the following documents:

(1) Quarterly withholding tax return

(2) Written statement of income payments made and taxes withheld

(3) Annual return containing the reconciliation of quarterly payments, list of payees and income payments.

On its 1985 claim, petitioner failed to prove by documentary or testimonial evidence what particular payments were made during the said last quarter. Exhibit H, which contains a certification letter dated February 21, 1990 issued by BPI Credit Corporation merely enumerates in general the various taxes withheld for the years 1985 and 1986 without indication as to the date of the remittance or payment of the tax to the BIR. No other evidence was presented to support the withholding and payment of taxes for the last quarter of 1985.

To prove its 1986 claim for refund, petitioner presented Exhibits "F" to "J" consisting of various certifications issued by the Bank of the Philippine Islands, BPI Credit Corporation and Bank of America as withholding agents. All the above certifications were defective as they were not properly identified and testified as to the truthfulness of their contents by the officers who issued these documents nor by any officer who knows about the same. The witnesses presented by petitioner merely testified on the identity of the signatories to said certifications but never to their contents. Granting for purposes of argument that said certifications have probative value, they tend to prove only two basic facts: (1) that there were investments made by BPI as trustee in the form of "deposit substitutes"; (2) that the corresponding taxes due were withheld by the withholding agents. However, no other evidence was presented to prove the fact of payment or remittance of the said withholding taxes to the Bureau of Internal Revenue. In two instances namely the withholding taxes done by Hongkong Bank and BA Finance Corp., petitioner presented aside from certifications of withholding tax, Central

Bank confirmation receipts, quarterly withholding tax return and BIR Form 1743-1 - "certificate of creditable income tax withheld at source" to prove payment and remittance of the withholding tax. Unfortunately, as discussed above, the claim covering Hongkong Bank withholding taxes has already prescribed while the claim covering the BA Finance in the amount of P2,552.08, the documents submitted to prove the claim consisting of BIR Form No. 1743-1, Central Bank confirmation receipts and quarterly returns failed to indicate that the payment was for and in behalf of payee. Not one witness has testified as to their contents. This only shows that petitioner is well aware of the required documents that have to be presented to prove its claim. Their failure to produce will only mean the absence of those documents. In fact, BPI, as trustee and the principal withholding agent for most of the placements made in behalf of the PAL Pilots Retirement Plan failed to present a single document to prove the payment or remittance of the withholding tax. In this respect, this Court agrees with the respondent that claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. CIR 67 SCRA 351; Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-17509, January 30, 1970, 31 SCRA 95).

On the third issue of whether or not the income tax exemption granted to promote retirement benefit plan has already been revoked by Presidential Decree No. 1959, this Court would like to inform respondent that the decision of this Court in C.T.A. Case No. 3888, entitled GCL Retirement Plan, et al. vs. Commissioner of Internal Revenue holding the non-repeal of the tax exempt privilege of private retirement plan has already been affirmed by the Supreme Court of the Philippines in its decision in Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. L-95022, March 23, 1992. However, a decision on the legality or illegality of this claim based on this doctrine becomes unnecessary in view of prescription and failure of the petitioner to prove its claim for refund factually by clear and convincing evidence.

In view of the foregoing, the Court finds and so holds that petitioner is not entitled to the refund being claimed for taxable years 1985 and 1986.

WHEREFORE, finding the instant petition for review without merit, the same is hereby dismissed and petitioner's claim for refund is hereby denied.

With costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 22, 1992.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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

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