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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION as Trustee and Investment Manager of various Retirement Funds,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4953

Promulgated:
MAY 14 1996

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DECISION

Before Us is a judicial claim filed by petitioner seeking for the recovery of withholding taxes allegedly erroneously and/or illegally collected by respondent covering the year 1991 in the aggregate amount of P16,618,635.96.

Petitioner is a banking corporation duly organized and existing under Philippine laws. It is authorized to perform trust functions and activities by the Central Bank of the Philippines, and as such, is the duly appointed trustee and investment manager of the herein-below enumerated trust funds (funds for brevity) created or set up pursuant to their respective retirement and provident plans. Petitioner claims that the plans have individually and separately complied with the requirements for a reasonable benefit plan prescribed by

Republic Act No. 4917, as implemented by Revenue Regulations 1-68, and were accordingly certified by the Commissioner of Internal Revenue as "qualified" or tax-exempt plans. (Petition for Review, pp. 2 & 4, CTA records).

The facts are simple.

As trustee, petitioner, among others, invested the assets of the various funds in government securities issued by the Central Bank of the Philippines, called treasury bills, during the whole year of 1991. The banking and financial institutions from which the securities were purchased correspondingly withheld the final tax of 20% provided under Section 21(c)(1), in relation to Section 50(a), Title II of the Tax Code from the interest income or yield derived by the funds from said investments. (Petition for Review, pp. 5 & 6, CTA records)

Petitioner invokes the more recent case of the **Commissioner of Internal Revenue vs. GCL Retirement Plan, etc.**, promulgated on March 23, 1992, 207 SCRA 487, which pronounced the exemption of qualified retirement plans from any and all income tax, as a confirmation of its standpoint on the matter (Petition for Review, pp. 8-9, CTA records).

Thus, on December 21, 1992, petitioner allegedly filed a claim for refund with the respondent in the aggregate amount of P16,618,635.96 representing withheld taxes on the income of the various funds from purchases of treasury bills.

Petitioner deemed the withheld taxes as erroneous and/or illegal as the funds are exempt from income tax.

With the continued inaction of respondent, however, and the two-year prescriptive period for filing a judicial claim for refund about to expire, petitioner moved to toll the running of the period.

Hence, this instant appeal filed on February 10, 1993.

Petitioner reasserts its stance *a quo*.

In answer, respondent contends, among others, the following, to wit:

> a) The decision of the Supreme Court in the case of **Commissioner of Internal Revenue vs. GCL Retirement Plan, etc.**, 207 SCRA 487 (1992), is not applicable to the instant petition. Neither did petitioner show that it is similarly situated as the taxpayer in the said case;
>
> b) The petition for review should be dismissed as there is no proof whatsoever in the petition to show that petitioner filed a claim for refund with respondent;
>
> c) The petition does not state a cause of action, there being no allegations as to when the said payments were made.

Anent the first issue, respondent's retort that the case of **Commissioner of Internal Revenue vs. GCL Retirement Plan,** etc. is not applicable to the case at bar is wantonly bereft of merit. The aforementioned case dealt on the tax-exemption privilege of employee's trust in accordance with then Section 56(b), now Section 53(b), of the Tax Code of 1939, as amended by Republic Act No. 1983, in relation with Republic Act No. 4917. In gist, the income of employee's trust created pursuant to a reasonable private benefit plan priorly qualified as exempt from income tax by the Commissioner of Internal Revenue. is exempt from the final withholding tax collected therefrom.

Precisely, the petition seeks the refund of taxes withheld from the income of various employees retirement funds pursuant to the abovecited laws. It is also alleged that the respective plans of the funds had complied with the requirements of Republic Act No. 4917, as implemented by Revenue Regulations 1-68, and were accordingly certified by the Commissioner as "qualified" or tax-exempt plans (Petitioner for review, pp. 1, 4, CTA records). Verily, petitioner is similarly situated as the taxpayer in the aforecited GCL Retirement Plan case.

Delving into the second issue, however, We find merit on the contention of respondent that there is no proof whatsoever in the petition to show that petitioner filed a written claim for refund with respondent, in accordance with the mandatory provision of Section 230 of the Tax Code, which states, thusly:

> 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, xxx until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. XXX (emphasis supplied)

A close perusal of the alleged written claim for refund dated December 21, 1992 (Annex "A" of the Petition) readily shows that there is no indication whatsoever that respondent Bureau ever received such claim for refund. The usual Bureau of Internal Revenue stamp of receipt duly imprinted on the printed pages of the written claim is absent. We cannot, thus, determine with certainty whether the claim was duly filed with respondent, except for the unilateral and self-serving allegation of the petitioner. In fact, petitioner in its petition and memorandum failed to state the exact date of filing of the alleged written claim, lending credence to the factual absence thereof. It is only the date of the letter-claim that is emphasized. (Petition, par. 6, p. 6, Memorandum for the Petitioner, par. 6. p. 9; pp. 6 and 229, CTA records) Of importance, respondent specifically denied such filing of the written claim for refund in her answer.(Answer, pars. 5 and 9; pp. 30-31, CTA records)

Moreover, assuming for the sake of argument that the above written claim for refund has been duly filed with the BIR, petitioner nonetheless failed to include the same in its formal offer of evidence. The Rules of Court is strict in not considering evidence not formally offered. (Section 39, Rule 132, Revised Rules of Court).

Under the foregoing situation, the *faux pas* committed by petitioner cannot even be cured by the recent case of **Oñate vs. Court of Appeals and Taguba**, G.R. No. 116149, promulgated on November 23, 1995, where the Honorable Supreme Court, citing the cases of **People vs. Napat-a**, 179 SCRA, 403 (1989) and **People vs. Mate**, 103 SCRA 484 (1981), relaxed the aforesaid rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are satisfied, viz: first,"the same must have been duly identified by testimony duly recorded and second, the same must have been incorporated in the records of the case".

Sad to say, there is no record contained in the transcript of stenographic notes that would reveal petitioner as having done any of the above requirements.. It simply did not introduce the said claim for refund during the trial proceedings. Hence, no testimony on the identification of the written claim could ever have been recorded and incorporated in the records of herein case.

Prescinding from the above discussion, we resolve not to dwell anymore on the merit of the herein third issue, including the appreciation of the submitted evidences due to the presence of a fatal defect in the petition at bar.

WHEREFORE, in view of the absence of a written claim for refund as having been duly filed with the Commissioner of Internal Revenue , the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On Leave)
MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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 Appels