REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRUSTEES OF THE EMPLOYEES NON-CONTRIBUTORY RETIREMENT FUND OF THE STANDARD CHARTERED BANK (Philippine Branch),
Petitioners,

- versus - C.T.A.. CASE NO. 4376

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

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D E C I S I O N

This is a claim for refund of the taxes withheld on income received from bank savings deposits and money market placements.

Petitioners are the trustees of the Employees Non-Contributory Retirement Fund of the Standard Chartered Bank duly organized in accordance with Republic Act (R.A.) No. 4917, "An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax whatsoever," which was promulgated on June 17, 1967.

On various dates during the years 1986 and 1987, petitioners' income on deposits and placements with Standard Chartered Bank was subjected to withholding tax in the total amounts of P952,748.17 computed as follows:

Savings Account No. 215024504

D a t e	Interest Earned	Withholding Tax
3-7-86	P14,916.45	P2,610.30
6-6-86	6,802.71	1,190.53
9-5-86	5,550.63	1,110.20
12-5-86	2,713.18	542.60
3-6-87	4,775.07	955.00
6-5-87	10,265.62	2,053.20
9-4-87	2,981.92	596.40
12-4-87	6,890.33	1,378.00
		P10,436.23

Savings Account No. 215220281

D a t e	Interest Earned	Withholding Tax
7-14-87	P 8,450.17	P1,690.03
8-14-87	16,481.37	3,296.27
9-1-87	200,838.68	40,167.74
9-14-87	24,822.05	4,964.41
		P50,118.45

Money Market Placements

D a t e	Interest Earned	Withholding Tax
12-4-85	P205,326.55	P31,732.29
12-10-85	13,434.53	2,115.94
1-6-86	196,612.07	34,407.11
1-9-86	14,235.36	2,491.19
2-5-86	206,575.89	36,150.78
2-5-86	27,866.67	4,876.67
2-11-86	14,694.96	2,571.62
3-3-86	6,000.00	1,050.00
7-7-86	322,511.71	56,439.55
3-14-86	43,699.90	7,647.48
3-21-86	76,842.75	13,447.48
4-2-86	49,826.60	8,719.66
4-7-86	791,389.36	139,520.22
5-14-86	32,322.87	5,815.47
5-27-86	16,486.96	2,999.70
6-19-86	54,518.24	9,540.69
7-1-86	35,983.96	6,896.92
7-8-86	597,878.23	115,633.59
7-16-86	30,107.62	5,808.25
8-25-86	16,650.23	3,330.04
9-15-86	34,241.30	6,848.26

9-17-86	34,307.54	6,861.50
9-29-86	28,481.43	5,696.29
10-7-86	366,039.94	73,207.99
10-24-86	16,855.38	3,371.08
10-29-86	3,083.33	616.67
11-11-86	32,236.77	6,447.35
11-17-86	27,334.71	5,466.94
11-28-86	32,689.14	6,537.83
12-5-86	259,384.95	51,876.99
12-23-86	12,342.28	2,468.46
1-12-87	28,037.07	5,607.41
1-16-87	24,148.84	4,829.76
1-27-87	28,609.89	5,721.97
2-3-87	196,158.24	39,231.64
3-13-87	28,270.48	5,654.09
5-17-87	23,944.05	4,788.81
3-20-87	225,524.59	45,524.91
3-31-87	32,460.89	6,492.17
5-4-87	154,186.24	30,837.25
5-13-87	14,394.41	2,878.88
5-15-87	28,055.78	5,611.15
6-1-87	372,107.24	74,421.44
		P892,193.49
T O T A L		P952,748.17

Petitioners filed on February 10, 1989 a claim for refund with the respondent Commissioner of Internal Revenue on the ground of erroneous payment of the above taxes.

To preserve the petitioners' right to appeal before this Court as mandated by Section 230 of the National Internal Revenue Code, as amended (infra), they filed on July 12, 1989, this instant petition for review.

However, in petitioners' memorandum, filed on June 1, 1993, the amount being claimed as refunds was changed to P442,453.68 (should be P516,876.02). The original amount of P952,748.17 was reduced by

P593,250.07 representing claims which had already prescribed and was increased by P157,377.92 as additional claims, computed as follows:

Amount of refunds previously claimed		P952,748.17	
Less: Amount already prescribed			
Savings Deposit (S.A. No.21521504)	P 5,453.63		
Money Market Placements	587,796.44	593,250.07	P359,498.10
Add: Claims not included in petition			
Savings Deposit (S.A. No.25522028)			157,377.92
			P516,876.02

The sole issue before this Court is whether or not petitioners are entitled to a refund in the amount of P952,748.17 (or P442,453.68 as prayed for in the petitioners' memorandum.)

It is not in dispute that petitioners are entitled to tax exemption under Section 53(b) of the Tax Code in relation to R.A. No.4917.

Section 53(b) provides:

> "*Exception* - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible at any time prior to satisfaction of all liabilities with respect to employees under the trust, for any part of the *corpus* or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: x x x."

The Supreme Court, in the case of **Commissioner of Internal Revenue vs. Court of Tax Appeals** (207 SCRA 487) held that:

> "The tax-exemption privilege of employees' trust, as distinguished from any other kind of property held in trust, springs from the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trust for tax exemption
>
> And rightly so, by the virtue of *raison de'etre* behind the creation of employees' trusts. Employees'trust or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose."

Respondent, however, denied the claim based on the following reasons:

> 1. Section 53(b) of the Tax Code which grants tax exemption was deleted by Presidential Decree (P.D.) No.1959;
>
> 2. Petitioners' evidence are insufficient to be entitled to a refund; and
>
> 3. The right to claim the refunds has already prescribed.

The tax exemption was originally granted under R.A. No.1983 for the purpose of encouraging the formation and establishment of private plans for the benefit of employees outside of the Social Security Act.

In the same case of Commissioner of Internal Revenue vs. Court of Appeals (supra), it was ruled that P.D. No.1959 dated October 10, 1984 (Amending Certain Sections of the NIRC, as Amended) can not repeal by implication the tax advantage granted under Sec. 53 (b) of the Tax Code.

The Supreme Court held:

> "The deletion in Pres. Decree No.1959 of the provisos 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. Rep. 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)."

With regard to petitioners' evidence, respondent, in his memorandum, claimed that no document has been presented by petitioners to show that the alleged amount withheld were remitted to the Bureau of Internal Revenue.

He alleged that:

> "In this case, petitioners marked several documents as its exhibits, however, no document has been presented to show that the alleged amount withheld were remitted to the respondent.
>
> The Confirmation receipts introduced by the petitioner as its evidence are payments made by the Bank to the BIR which represents withholding taxes from all the depositors of the Bank. There has no proof whatsoever that portion and partial of these payments made by the Bank belongs to the herein petitioner.
>
> The fear of the respondent in allowing the refund of petitioner without evidence showing accurately and distinctively that part of the amount remitted by the bank are amount which petitioner is intending to refund, the government will be at the mercy of the taxpayer in granting a refund especially the amount being claimed." (Memorandum, p.3, CTA Records, p.174)

This Court does not think so.

Petitioners presented statements and certificates of withholding taxes accomplished by Standard Chartered Bank, the withholding agent. Exhibits "A" and "B" showed the amounts withheld by the bank from the income earned by the petitioners arising from their savings deposits and money market placements.

In the case of **Commissioner of Internal Revenue vs. Citytrust Banking Corporation** (C.A. G.R.

No.SP.26839, July 31, 1992), the Court of Appeals in affirming the decision of this Court, held that:

> "Of greater significance also is the respondent Tax Court's observation that the remittance of tax withheld made by the withholding agents could have been easily verified by petitioner, considering that it is within their competence to know, to check and verify the regularity of performance of his subordinates. It underscored the fact that the remittances of withholding taxes by producing the confirmation receipt is not required by law and regulation as the withholding agent is not within the control of the payee taxpayer but the tax agent of the Commissioner of Internal Revenue. It is on this account that the taxes deducted and withheld are considered special fund in trust for the government until paid to the Bureau of Internal Revenue. The withholding agent merely hold the amount in trust for the government xxx."

In this particular case, petitioner also presented the corresponding quarterly and annual returns of taxes withheld, confirmation receipts and payment orders to support their case. The petitioners' evidence consisting of the documents and testimonies of their witnesses, are more than enough to prove that the amount claimed as refunds was indeed withheld from the petitioners' income.

On the question of prescription, Section 230 of the Tax Code provides:

> "*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 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.

In any case, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty</u> 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.

xxx xxx xxx
(Underscoring supplied)

Respondent, in supporting his denial of the petitioners' claim, advanced the argument that:

"Pursuant to above quoted Section of the Tax Code a claim for recovery of taxes illegally or erroneously collected shall be filed within two (2) years from the date of payment. Petitioner has filed its claim for refund only on February 10, 1989. Consequently, the right of the petitioner for the recovery of final taxes paid for the year 1986 involving the sum of P593,350.07 has prescribed. The last day for the remittance of the final taxes withheld in the last quarter of 1986 was on January 25, 1987 (Memorandum, pp.4-5, CTA Records, pp.175-176)

It is worthy to note that petitioners reduced their claim by P593,250.07, conceding that some of their claims has already prescribed pursuant to Section 230 of the Tax Code. They admitted, thus:

> "However, considering the two-year prescriptive period to institute the claim for refund with the Commissioner of Internal Revenue from the date of payment and the limitation on the filing of suit or proceeding within the same prescriptive period, the refundable amounts is P442,453.68, or P212,478.07 and P229,975.61, for the Savings accounts money placements, respectively xxx." (Memorandum, pp.3-4, CTA Records, pp.187-188)

As to the additional claim in the amount of P157,377.92, this Court cannot pass judgment on the issue since the claim was never raised before the respondent in the petitioners' original claim for refunds nor was it included in the petition for review filed by the petitioners.

In Section 7 of Republic Act No.1125, this Court "shall exercise appellate jurisdiction to review by appeal xxx (d)ecisions of the Commissioner of Internal Revenue in cases involving xxx refunds of integral revenue taxes xxx."

Since the amount of P157,377.92 was not included in the original claim, the respondent is not expected to decide on the matter. In like manner, this Court has no jurisdiction since It can only decide on the matters previously brought to the respondent for the latter's decision.

Finally, considering that the instant petition for review was filed before this Court on July 12, 1989, it certainly follows that claims for refund of taxes paid before July 12, 1987 had already prescribed as provided under Section 230 of the Tax Code (supra). The total amount left is P52,092.85 representing claims which were filed before the respondent and this Court within the two-year prescriptive period, computed as follows:

Savings Account No.215024504

D a t e	Interest Earned	Withholding Tax
9-4-87	2,981.92	596.40
12-4-87	6,890.33	1,378.00
		P1,974.40

Savings Account No.215220281

D a t e	Interest Earned	Withholding Tax
7-14-87	P 8,450.17	P1,690.03
8-14-87	16,481.37	3,296.27
9-1-87	200,838.68	40,167.74
9-14-87	24,822.68	4,964.41
		P50,118.45
T o t a l		P52,092.85

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund in favor of the petitioner the amount of P52,092.85 representing taxes on income arising from bank savings, deposit and money market placements erroneously withheld.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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