REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS (in its capacity as Trustee of various employee retirement funds),
Petitioner,

- versus - C.T.A. CASE NO. 5450

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 12 1999

x - x

DECISION

This is a petition for review filed by petitioner, BANK OF THE PHILIPPINE ISLANDS (BPI), successor-in-interest of Citytrust Banking Corporation (Citytrust), trustee of the various employee retirement funds, *infra*, against respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's inaction on petitioner's claim for refund in the amount of P7,066,426.32, allegedly representing the 20% final withholding tax erroneously withheld from the interest income of the Retirement Funds for the year 1995.

Petitioner is a banking corporation duly organized and existing under Philippine laws and is authorized to perform trust functions and other activities by the Bangko Sentral ng Pilipinas (BSP). It is the surviving corporation in a merger between BPI and Citytrust, who was the duly appointed trustee and investment manager of various retirement funds ("Funds") and provident plans ("Plans") subject of this case, on October 4, 1996. Thus, petitioner BPI succeeds to all the rights and obligations of Citytrust, including those pertaining to the trust accounts involved in the instant case, in accordance with Section 80(5) of the Corporation Code of the Philippines, to wit:

> "**Sec. 80.** ***Effects of merger or consolidation.*** - The merger or consolidation, as provided in the preceding sections, shall have the following effects:"
>
> x x x x x x x x x
>
> "5. The Surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporation in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and <u>any claim, action or proceeding pending by or against any such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be.</u> Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation." (Underscoring supplied)

During the year 1995, Citytrust, as trustee and investment manager of the various retirement plans, *infra*, invested the retirement funds in government securities and similar investments, from which the funds realized an aggregate interest income of ₱34,482,517.77. The said income was subjected by the BSP to the 20% final withholding taxes under Section 21 (c)(1) in relation to

Section 50(a) of the Tax Code; allegedly in the total amount of P7,066,426.32.

On September 18, 1996, Citytrust, filed with respondent a claim for refund or tax credit of the aforesaid amount of P7,066,426.32, on the ground that the withholding and collection of the 20% final tax from the income of the retirement funds was erroneous and/or illegal as the Funds are exempt from income tax pursuant to Republic Act No. 4917 in relation to Section 53(b) of the Tax Code and Supreme Court decision in the case of **Commissioner of Internal Revenue vs. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, 207 SCRA 487, March 23, 1992,** which upheld the exemption from income tax of income derived by qualified (tax exempt) retirement funds from bank deposits, money market placements or purchase of treasury bills and/or government securities. The claim for refund in the amount of P7,066,426.32 is broken down as follows:

T/A No.	Account Name	Income	Withholding Tax
1B-004	Ateneo Eagle Fund	₱ 44,952.04	₱ 8,994.57
1B-005	Ateneo Scholarship Fund	131,499.88	25,778.95
1B-007	Ateneo University Fund	216,909.24	47,943.90
1B-017	Misocom	23,221.31	4,789.51
5C-001	Citibank Retirement Fund	132,273.60	26,690.91
5C-001B	Citibank Retirement Fund	385,970.85	80,107.06
5C-002	Citytrust Retirement and Provident Fund	386,459.59	78,116.77
5C-003	Alcatel Trade Int'l. Phils.	24,793.16	4,971.64
5C-004	Singapore Airlines Ltd.	577,826.06	115,671.85
5C-007	Int'l. Flavors & Fragrances	518.95	103.79
5C-008	Atlas Copco (Phils., Inc.)/		

	Pneumatic	17,942.65	3,597.29
5C-011	American President Lines	58,213.17	11,847.48
5C-013	The Goodyear Tire & Rubber Co.	190,712.68	38,142.54
5C-015	Philtread Tire & Rubber Co.	24,646.39	4,929.28
5C-017	Mercury Drug Corporation	115,232.30	23,474.90
5C-018A	Singer Sewing Machine Co.	147,574.01	29,608.56
5C-018B	Singer Sewing Machine Co.	36,090.29	7,243.44
5C-019A	MJO	0.00	0.00
5C-019B	North Negros Marketing	0.00	0.00
5C-020	Del Monte Phils., Inc.	438,629.44	89,621.40
5C-021B	Del Monte Phils., Inc.	179,568.74	35,913.72
5C-025	Nestle Phils., Inc.	1,436,208.97	35,913.72
5C-028	Caltex Phils., Inc.	272,997.19	54,639.86
5C-029	Assoc. of Int'l. Shipping Lines	10,709.28	2,194.70
5C-030	Dow Chemicals Pacific Ltd.	55,015.28	11,003.32
5C-032	Catholic Educational Association of the Phils.	236,749.40	48,675.53
5C-033	Royal Insurance Int'l. Ltd.	14,445.26	2,951.06
5C-035	Sime Darby Int'l. Tire Co., Inc.	41,408.01	8,283.84
5C-036	Boehringer Ingelheim	103,797.31	20,764.23
5C-037	J. Walter Thompson Co.	54,269.39	10,926.46
5C-038	Cagayan Electric Power & Light Co., Inc. (CEPALCO)	78,275.44	16,172.40
5C-041	Pfizer, Inc.	87,860.37	17,818.65
5C-042	Pacific Enamel & Glass Mfg. Corp.	32,660.72	6,568.69
5C-043	Petron Corporation	7,151,046.66	1,630,772.71
5C-043A	PNOC Energy Dev't. Corp.	1,754,531.44	363,249.07
5C-043F	Phil. Nat'l. Oil Co. Shipping & Transport Corp.	16,767,742.73	3,285,701.15
5C-044	GST Philippines, Inc. (Armco Marsteel)	29,123.69	5,826.65
5C-050	Abb Stal Refrige, Inc.	21,913.12	4,422.06
5C-051A	Manila Golf - Caddy Welfare	7,121.19	1,440.40
5C-051B	Manila Golf & Country Club, Inc. Death or Permanent	1,674.02	334.82
5C-052	Cyanamid	62,023.43	12,404.69
5C-053	Hemisphere Leo Burnett, Inc.	55,585.31	11,122.06
5C-054	BASF	40,934.42	8,249.53
5C-060	Admiral Realty Co., Inc.	17,838.03	3,637.53
5C-061	INTEL Phils.	312,095.01	63,934.07
5C-062	ECCP	8,383.91	1,677.66
5C-066	MIT Retirement Fund, Inc.	50,588.78	10,254.11
5C-068	Henkel Phils.	10,136.24	2,091.15
5C-069	Coca-Cola	156,850.78	34,414.01
5C-070	Amkor/Anam Pilipinas, Inc.	303,590.42	63,895.60
5C-072	Sharp, Phils.	88,655.63	17,986.64
5C-073	Colgate Palmolive Phils., Inc.	93,833.38	18,158.22
5C-073C	Colgate Palmolive Phils., Inc.	60,150.65	12,119.35
5C-073D	Colgate Palmolive Phils., Inc.	2,245.11	442.41
5C-074	FOSECO Phils., Inc.	236,949.04	47,412.82
5C-075	Malaysian Airlines	18,091.60	3,658.59
5C-076	Victory Liner	37,493.20	7,570.20
5C-081	Ault and Wiborg	184,828.18	37,273.49

5C-082	Wellcome Phils., Inc.	35,269.60	7,344.44
5C-083	Japan Airlines	12,666.56	2,533.32
5C-085	Poblador, Azada & Associates Retirement Plan	30,153.22	6,043.94
5C-086	Phil. Belt Mfg. Corp.	35,362.96	7,108.84
5C-089	United Airlines Phils. Ret. Plan	5,824.40	1,164.88
5C-091	Blue Bell Commodities	3,716.62	747.11
5C-092	Drug Makers Laboratory, Inc.	1,802.88	362.35
5C-093	BP South East Asia Ltd.	3,662.32	732.46
5C-094	Asian Finance IC Ret. Plan	12,959.71	2,605.30
5C-095	British Airways Ret. Plan	7,949.10	1,624.48
5C-096	US Embassy FSN Employees Ret. Plan	204,036.99	40,935.21
5C-097	Vitacolor Industrial Ret. Plan	2,384.46	476.88
5C-098	Phil. Bus. for Social Progress	47,447.51	9,568.73
5C-100	ASEC Int'l. Inc.	4,950.08	1,027.31
5C-100B	ASEC Info System	2,431.16	486.46
5C-100B	ASEC Info System	2,431.16	486.46
5C-102	Emirates	4,829.16	967.51
5C-103	Zilog	10,104.80	2,030.64
5C-106	Urdaneta Villa Ass. Ret.	3,347.18	691.23
5C-108	Ateneo de Davao	28,615.23	5,742.91
5C-110	Cyanamid Agricultural Research Foundation, Inc.	35,801.51	7,160.30
5C-111	Xavier University	56,293.43	11,346.24
5C-111C	Xavier University	0.00	0.00
5C-114A	Wyatt Co.	10,380.81	2,076.16
5C-114B	Wyatt Co.	29,058.07	5,811.62
5C-114C	Wyatt Co.	12,132.14	2,426.42
5C-115	The German Club	1,122.14	234.41
5C-116	Mfrs. Life Insurance Corp.	17,158.46	3,440.84
5C-117	Reftractories Corp. of the Phils.	73,476.59	14,920.32
5C-118	Bristol-Myers Squibb (Phils.), Inc.	71,317.63	14,263.52
5C-121	AT & T	6,631.89	1,352.06
5C-122	Sacred Heart School	14,823.68	2,970.11
5C-124	C.C. Unson Co., Inc. Ret. Plan	17,949.44	3,593.27
5C-125	Golay Buchel Phils., Inc.	12,923.78	2,587.79
5C-127	IATA Agency Services	10,426.02	2,143.61
5C-129	Sunlife of Canada	181,413.11	36,394.67
5C-130	Yasaki-Torres Mfg.	15,900.14	3,252.08
5C-135	Akerlund	37,476.98	7,525.23
5C-137	Food Industries	17,712.05	3,578.33
5C-138	University Physicians Services	12,128.08	2,425.61
5C-142	Transfarm Auto Sales	2,331.19	466.23
5C-142B	Transfarm and Co., Inc.	756.62	151.32
5C-143	Ateneo de Naga	36,680.94	7,344.50
5C-147	Phil. Waterworks Corp.	7,731.45	1,550.31
5C-148	Computer Prof., Inc.	4,011.62	802.31
5C-149	Prov. Fortune Ins. Corp.	8,766.92	1,753.36
5C-150	ING Bank	8,301.50	1,060.30
5C-151	Philex Retirement Trust	31,470.83	6,294.17
5C-155	Philex Retirement Trust	31,470.83	6,294.17
5C-156	FMC Marine Colloids	19,688.88	3,945.59
5C-157	H.B. Fuller (Phils.) Inc.	0.00	0.00

5C-161	Eveready Battery Co.	153,597.47	30,747.37
5C-162	Eastern Telecoms	48,948.94	9,890.83
5C-164	Ramon Magsaysay	11,062.82	2,569.21
5C-165	The Asia Foundation	3,722.89	788.15
5C-175A	Claret School	0.00	0.00
5C-175B	Claret School	0.00	0.00
	TOTAL	P34,482,517.77	P7,066,426.32

The aforesaid claim for refund was not acted upon by respondent, hence, on December 23, 1996, petitioner, as successor-in-interest of Citytrust, filed with this Court the instant petition for review.

Petitioner repleads its stance a quo in the instant petition and further pointed out that since each of the aforementioned trusts created by the retirement plans is registered with the BIR as a reasonable private benefit plan pursuant to Section 28(b)(7)(A) of the 1995 Tax Code, as amended by Republic Act No. 4917, they clearly enjoy exemption from income tax, including the 20% final withholding tax aforecited, thus, petitioner stressed that it is entitled to the refund of the 20% final withholding tax erroneously deducted and withheld from the income of the above-mentioned retirement plans in the total amount of P7,066,426.32.

On the other hand, respondent in his answer interposed, *inter alia*, that (1) the petition states no cause of action as it does not allege the date(s) when the tax sought to be refunded were actually paid, (2) Presidential Decree No. 1959 which took effect on October 15, 1984 withdrew the exemption from withholding taxes on interest income from bank deposits and yield from deposit substitutes and money market placements, and (3) it is incumbent upon petitioner to show that it is entitled to the refund demanded under Section 230 of the Tax Code.

The issue to be resolved by the Court is whether or not the interest income of the retirement funds, *supra*, are exempt from withholding taxes, thus, petitioner as trustee of the various retirement funds abovementioned is entitled to the refund of the amount representing the 20% final withholding tax erroneously withheld and collected by respondent from the interest income earned by the funds from its investments in government securities and similar undertakings.

This is not the first time that we have been confronted with such an issue at hand. As correctly stated by petitioner, the matter was already settled by the Supreme Court in the case of **Commissioner of Internal Revenue vs. The Honorable Court of Appeals, et al., G.R. No. 95022, March 23, 1992.** The Highest Court ruled in that case that an employees' trust maintained by an employer to provide retirement, pension, disability and death benefits to its employees and which has been approved and qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with RA No. 4917, is exempt from income tax, including the 20% final withholding tax imposed on interest earned on

Philippine currency bank deposits and yield from deposit substitutes, thus:

> "There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b], now 53[b], Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place." (Underscoring supplied).

Ergo, in accordance with the above ruling of the Honorable Supreme Court which is in conformity with the provisions of RA 4917 (Section 1) and Section 53(b) of the Tax Code, quoted hereunder, this Court finds that the withholding of the 20% final withholding tax from the income of the Funds was without legal basis, and hence, was illegally and/or erroneously collected.

> "**SECTION 1.** Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a "reasonable private benefit plan" maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizures by or under any legal or equitable process whatsoever x x x." (Emphasis supplied)

> "**Section 53.** ***Imposition of tax.*** — *(a) Application of tax.* — The tax imposed by this Title upon individuals shall apply to income of

> estates or of any kind of property held in trust, including -
>
> x x x
>
> (b) *Exception* - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profitable sharing plan of an employer for the benefit of some or all of his employees x x x." (Underscoring supplied)

The legal issue having been settled, what remains to be resolved by the Court as of the moment involves factual matters, that is whether or not petitioner has established by evidence its claim for refund.

In substantiating its claimed refundable amount, petitioner formally offered exhibits A to G-329, inclusive of submarkings, and the testimonies of its witnesses. Respondent did not object to the admission of petitioner's exhibits neither did he submit any documentary evidence to support his case. Thus, considering the uncontroverted evidence of the petitioner, the Court was persuaded to extend the relief sought by the petitioner but only to the amount of ₱5,559,574.35, as the Court after a minutiose scrutiny of the evidence presented including those which the Court took judicial notice of, finds that some of the retirement funds (enumerated below) were not specifically qualified and certified as tax exempt by the BIR and one of them failed to offer proof of withholding tax payments. Accordingly, the Court excluded the following from the computation of the allowable refund, thus:

a) Those with retirement plans which have not been specifically qualified and certified as tax-exempt by the BIR in accordance with RA 4917.

T/A No.	Account Name	Income	Withholding Tax
1B-004	Ateneo Eagle Fund	₱ 44,952.04	₱ 8,994.57
1B-005	Ateneo Scholarship Fund	131,499.88	25,778.95
1B-007	Ateneo University Fund	216,909.24	47,943.90
1B-017	Misocom	23,221.31	4,789.51
5C-094	Asian Finance IC Ret. Plan	12,959.71	2,605.30
5C-102	Emirates	4,829.16	967.51
5C-111	Xavier University	56,293.43	11,346.24
5C-114A	Wyatt Co.	10,380.81	2,076.16
5C-114B	Wyatt Co.	29,058.07	5,811.62
5C-114C	Wyatt Co.	12,132.14	2,426.42
5C-115	The German Club	1,122.14	234.41
5C-116	Mfrs. Life Insurance Corp.	17,158.46	3,440.84
5C-117	Reftractories Corp. of the Phils.	73,476.59	14,920.32
5C-118	Bristol-Myers Squibb (Phils.), Inc.	71,317.63	14,263.52
5C-121	AT & T	6,631.89	1,352.06
5C-137	Food Industries	17,712.05	3,578.33
5C-138	University Physicians Services	12,128.08	2,425.61
5C-142	Transfarm Auto Sales	2,331.19	466.23
5C-142B	Transfarm and Co., Inc.	756.62	151.32
5C-143	Ateneo de Naga	36,680.94	7,344.50
5C-150	ING Bank	8,301.50	1,060.30
5C-164	Ramon Magsaysay	11,062.82	2,569.21
5C-165	The Asia Foundation	3,722.89	788.15
5C-170	Ciba Geigy Phils.	11,588.91	2,363.47

b) Those with retirement plans which were previously disqualified in CTA cases 4807 and 5083 involving the same petitioner and same legal issues:

T/A No.	Account Name	Income	Withholding Tax
5C-044	Armco Marsteel	₱ 29,123.69	₱ 5,826.65
5C-050	Abb Stal Refrige, Inc.	21,913.12	4,422.06
5C-089	United Airlines	5,824.40	1,164.88
5C-098	Phil. Bus. for Social Progress	47,447.51	9,568.73
5C-108	Ateneo de Davao	28,615.23	5,742.91

c) Retirement fund which did not offer proof of withholding tax payments.

T/A No.	Account Name	Income	Withholding Tax
5C-151	Philex Retirement Trust	₱ 31,470.83	₱ 6,294.17

With respect to the remaining retirement funds of other companies which were not excluded, a close scrutiny of the evidence presented by petitioner reveals that not all of the withholding tax payments mentioned in the summary were properly substantiated by source documents such as Confirmation of Sale and Fixed Income Securities Placements.

In conclusion, only the amount of ₱5,559,574.35 should be granted to petitioner.

WHEREFORE, the instant petition for review is partially **GRANTED.** Respondent is hereby ordered to refund or issue a tax credit certificate to petitioner, as trustee of the various retirement funds, the sum of ₱5,559,574.35, representing the 20% final withholding tax proven to be erroneously withheld from the interest income of said retirement funds for the year 1995. No costs.

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