REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE BANKING CORPORATION
(now Global Business Bank, Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 6110

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 0 4 2002

x - x

DECISION

This is a Petition for Review involving a claim for refund in the amount of P76,868.26 allegedly representing tax on interest income from bonds/debt securities which was alleged to have been erroneously withheld and remitted by the petitioner to the respondent for the month of April 1998 (see *Amended Petition for Review, pages 36-44, CTA Records*).

The antecedent facts, as culled from the records of the case are as follows:

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at PhilBank Bldg., Ayala Avenue, 1226, Makati City *(Joint Stipulation of Facts, Item No.1.01, CTA records p. 72).*

On various dates starting 1996, herein petitioner purchased interest-earning bonds and debt securities issued by the National Power Corporation (NPC) and the Philippine Long Distance Telephone Company (PLDT), to wit:

Type of Bonds/Notes Debt Securities/Issuer	Amount
Notes (PLDT)	US$1,000,000.00
NPC 02	1,000,000.00
	US$ 2,000,000.00

Petitioner accrued interest on the aforementioned bonds/debt securities on a monthly basis, and during the month in which interest accrued, it allegedly paid the tax on the interest and remitted the amount together with their income taxes withheld on its Foreign Currency Deposit Unit (FCDU) income.

For the month of April 1998, the total net accrued interest earnings on these bonds/debt securities was US$19,131.93. The Bank paid the tax on the net accrued interest in the amount of US$1,913.19, and remitted the same together with other income taxes withheld for the month of April 1998 on its FCDU income. The exchange rate utilized by the Bank at that time was P 40.178 to US$1.00. The Philippine currency equivalent of the tax on the net accrued interest for the month of April was P 76,868.26.

During the latter part of 1999, petitioner discovered that the bonds/debt securities it purchased were actually "tax free covenant bonds." And under the terms and conditions of the issue, the issuer obligated itself to pay the taxes with respect to the interest, without deduction of any amounts from the interest to be remitted to the owners of the bonds/debt securities. Hence, petitioner was no longer under any obligation to withhold and remit the tax on said interest income.

Subsequently thereafter, petitioner filed a written claim for refund with the Commissioner of Internal Revenue on May 9, 2000 (Exhibit B). As the period to appeal was about to lapse, petitioner elevated the matter to this Court by way of Petition for Review on the very same day it filed its letter-request.

Respondent, in his Answer, raised the following Special and Affirmative Defenses, thus:

> 1. The Petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 2. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes *(Commissioner of Internal Revenue vs. Ledesma 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);*
>
> 3. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute *(Asiatic Petroleum vs Llanes, 49 Phil. 466; Union Garment Co. vs Court of Tax Appeals, 4 SCRA 304)*;
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> 4. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 5. It is incumbent upon Petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

In order to substantiate its case, petitioner formally offered the following documentary evidence which have been admitted by this Court in its resolution dated May 28,2001, thus:

Exhibit	Description
A	Monthly Remittance Return of Income Taxes Withheld for the month of April 1998
B	Letter-request for Refund addressed to the BIR
C	Schedule of Income Tax Payments of Petitioner
G to G-19	Fax Transmission of Confirmation slips attesting Petitioner's purchase of various bonds

Respondent, on the other hand, was declared to have waived his right to present evidence for failure to appear for two consecutive times (CTA Resolution, dated August 15, 2001, CTA records, p. 136).

This Court is now tasked to resolve the following issues jointly stipulated by the Parties, thus:

1. Whether or not the petitioner erroneously withheld and remitted income tax on "tax-free covenant bonds" when it should not have withheld any tax.

2. Whether or not the petitioner is entitled to a tax refund in the amount of P76,868.26.

Before proceeding to the core of the controversy, it is proper to ascertain first whether petitioner has indeed purchased interest-earning bonds and securities, as basis for the erroneously withheld and remitted interest income.

Petitioner's witness testified that sometime in 1996, the bank purchased tax-free covenant bonds as evidenced by the confirmation of sales received from counter parties or sellers of the bonds (TSN, February 13, 2001, pp. 9-10), thus:

> *"Atty. Selim: Now, in this Petition, it states that in 1996, PhilBank purchased tax-free covenant bonds, what were these bonds?*
>
> *Mr. Rivera: These bonds were issued by the Republic of the Philippines, PLDT, PNOC and the National Power Corporation.*
>
> *Atty. Selim: What proof do you have that PhilBank purchased these bonds?*
>
> *Mr. Rivera: The Confirmation of Sales from the Counterparty or the seller of the bonds."*

Accordingly, petitioner submitted the following fax transmissions sent by the counter parties:

Kinds of Bonds	Counter Party	Amount	Exh.
PNOC Energy Development Bonds	Chemical Bank	US$1,000,000	G
PLDT Eurobonds	ING Bank	1,000,000	G-1
NPC bonds	ING Bank	1,000,000	G-2
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-5
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-6
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-9
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-10
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-12
ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-13

ROP bonds	Chase Manhattan International, Ltd.	1,000,000	G-19

The foregoing documentary evidence would verily establish that, petitioner indeed purchased PLDT bonds, PNOC bonds and US$7,000,000.00 of ROP bonds. However, it must be noted that in its original Petition for Review, petitioner mentioned three types of Bonds/Notes, the PNOC, PLDT and NPC. Said Petition was further amended to exclude the PNOC bonds and zeroed-in on its purchase of the PLDT and National Power Corporation Bonds. Thus, for the month of April alone, the tax paid on the total net accrued interest on these bonds was US$1,913.19 or P76,868.26. Believing that these bonds were actually "tax-free covenant bonds", it then filed a claim for the refund of the erroneously withheld and remitted income tax with the BIR.

This brings us to the resolution of the first issue at bar. Petitioner claims that it erroneously withheld and remitted tax on interest income from "tax free covenant bonds."

For easy reference, we will quote hereunder the applicable provision of law, thus:

"Section 57. ***Withholding tax at source.*** **–**

x x x x x x x x x

(C) Tax-free covenant bonds. - In any case, where bonds, mortgages, deeds of trust or other similar obligations of domestic or resident foreign corporations, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed in this Title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the Philippines, or any state or country, the obligor shall deduct or withhold a tax equal to thirty percent (30%) of the interest or other payments upon those bonds, mortgages, deeds of trust or other obligations, whether the interest or other payments are payable annually or at shorter or longer periods, and whether the bonds, securities or obligations had been or will

> be issued or marketed, and the interest or other payment thereon paid, within or without the Philippines, if the interest or other payment is payable to a non-resident alien or to a citizen or resident of the Philippines."

It is clear from the aforequoted law that if the obligor (issuer) agrees to pay the required tax or reimburse the tax paid by the obligee (owner of the bond) or to pay the interest without deduction for any tax, which it may be required or permitted to pay or to retain therefrom, it is incumbent upon the obligor to withhold and remit a tax equal to thirty percent (30%) of the interest or other payments upon those bonds to the government. In this case, the obligee is no longer under any obligation to withhold and remit the tax with respect to the interest.

Corollary thereto, Section 2.58 of Revenue Regulations No. 2-98, as amended, requires that final withholding tax be deducted and withheld on a monthly basis, viz:

> **"Section 2.58.** ***Returns and payment of taxes withheld at source.***
>
> (A) *Monthly return and payment of taxes withheld at source* –
>
> (1) *Where to file* - Creditable and final withholding taxes deducted and withheld by the withholding agent shall be paid upon filing a return in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or principal place of business of the withholding agent. In places where there is no authorized agent banks, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permits.
>
> (2) *When to file* –

> (a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for the taxes withheld for December which shall be filed on or before January 25 of the following year.

Based on the foregoing provisions, we are now tasked to determine whether petitioner has properly established its allegation that the bonds it purchased are "tax-free covenant bonds."

In its Memorandum, petitioner mentioned the terms and conditions on the issue of the bonds/notes with respect to taxation and even quoted verbatim the provision contained in the PLDT Debt Securities *(Petitioner's Memorandum, CTA records, p.145)*. Petitioner likewise averred that said provision on "tax-free covenant bonds" applies to all other bonds/notes/securities as they are similar in terms and conditions.

We rule against the petitioner.

Apart from the fact that petitioner did not submit any documents to support its allegation that the bonds it purchased are considered "tax-free covenant bonds" because it did not present any prospectus, contract or agreement to this effect, the more important reason for denying the instant claim lies on the lack of merit of the claim.

The evidence to prove that the tax on interest income had been withheld and remitted by the petitioner to the Bureau of Internal Revenue is the monthly remittance return of income taxes withheld (Exhibit A). Still, said document does not establish with certainty that the amount of P76,868.26 is part of the final income taxes on interest income paid by the petitioner on its purchase of tax-free covenant bonds. A perusal of petitioner's monthly remittance return for the month of April 1998 would reveal that petitioner withheld and remitted 10% tax on its Foreign Currency Deposit Unit (FCDU) Income. If indeed petitioner erroneously paid the tax on interest income of its purchase of tax-free covenant bonds, it should have used the tax rate of 30% for its income on interest as required by Section 57 of the Tax Code and not merely 10%.

Predicated on the foregoing findings, it can be inferred that the 10% tax paid by the petitioner for the month of April 1998 actually corresponds to its payment of 10% final income tax on FCDU and not to the payment on interest income on its tax-free covenant bonds. Our conclusion draws legal support from the provision of Section 27 (D)(3) of the Tax Code, as amended, hereunder quoted as follows:

> "(3) ***Tax on Income derived under the Expanded Foreign Currency Deposit System.-*** Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks including branches of foreign banks may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten (10%) of such income.

We can therefore conclude that the alleged erroneous payment by the petitioner of the amount of P 76, 868.26 for the month of April 1998 actually pertains to the 10% tax due and payable on its FCDU income. It is noteworthy to stress that the tax imposed under Section 27(D)(3) should be treated distinct and apart from that imposed under Section 57 (c) of the Tax Code. While both provisions have the same tax base -- the income of the interest earned -- the tax on the FCDU is paid by the depository bank per se, while the tax imposed in a tax-free covenant bond is paid by the obligor (issuer) of the bond/securities or other instruments. True enough, the term "tax free covenant bond" should not necessarily be taken in its literal sense. In reality, it does not mean that no tax is due and payable thereon. It is "tax-free" only on the part of the buyer because it is not required to pay any tax since it is the seller of the bond who obligates itself to shoulder whatever tax is imposed by law. Thus, there is really no basis for the refund since the withholding and remittance to the BIR of the 10% final tax on its FCDU income is accordingly provided for by law.

Even granting, for the sake of the argument that petitioner intended to pay the final tax on its interest income on its tax free covenant bonds, then the tax paid withheld and remitted should have been 30% of the interest income, instead of 10% as reflected in its monthly remittance return. On this point, petitioner again miserably failed to prove that the amount subject of this Petition was indeed erroneously withheld and remitted to the BIR.

Rudimentary is the rule that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer (**Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**).

IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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