REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR & CIGARETTE FACTORY EMPLOYEES RETIREMENT PLAN, otherwise known as the LA SUERTE WORKMEN COMPENSATION FUND,

Petitioner,

- versus -

C.T.A. CASE NO. 4338

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

4/16/93

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

D E C I S I O N

This is a claim for refund of the amount of P741,259.92 representing withholding tax on interest income from the fund entrusted by way of loan investments to La Suerte Cigar & Cigarette Factory alleged to have been erroneously and/or illegally withheld and collected by respondent in 1987.

The records show that petitioner La Suerte Cigar & Cigarette Factory Employees Retirement Plan is an employees trust set up by the employer for the exclusive benefit of its employees providing retirement and separation benefits. The said plan was approved and qualified as exempt from income tax by respondent pursuant to Republic Act No. 4917 (please see Exhibits A, & B, pp. 79-81, CTA records).

On May 17, 1984, petitioner and Citicorp Investment Philippines (CITICORP) for short entered into an investment management agreement whereby CITICORP was appointed the investment manager of the fund (Exh. D to D-6, pp. 85-89, CTA records).

In 1987 petitioner granted loans to La Suerte Cigar & Cigarette Factory and earned from the same interest income from which a final tax of 20% was withheld pursuant to Section 21(c)(1) in relation to Sec. 51(a) of the Tax Code. The investment, interest income and the income tax withheld are as follows: (Exhibits E to E-3, F to F-3, pp. 66-67, CTA records)

Amount of Promissory Note	Due Date	Interest Income	Withholding Tax Collected Date	Withholding Tax Collected Amount
P 4,455,000.00	02-16-87	P 76,106.25	02-16-87	P 15,221.25
32,157,000.00	02-20-87	549,348.75	02-20-87	109,867.75
4,455,000.00	04-20-87	70,166.25	04-20-87	14,033.25
32,157,000.00	04-21-87	482,355.00	04-21-87	96,471.00
4,000,000.00	06-19-87	60,000.00	06-19-87	12,000.00
32,157,000.00	06-20-87	482,355.00	06-20-87	96,471.00
4,000,000.00	08-18-87	70,000.00	08-18-87	14,000.00
32,157,000.00	08-19-87	562,747.50	08-19-87	112,549.50
4,000,000.00	10-18-87	70,000.00	10-18-87	14,000.00
32,157,000.00	10-19-87	562,747.50	10-19-87	112,549.50
4,000,000.00	12-07-87	77,333.33	12-07-87	15,466.67
32,157,000.00	12-17-87	643,140.00	12-17-87	128,628.00
TOTAL		P3,706,299.58		P741,257.92

Petitioner filed a written claim for refund with respondent Commissioner of Internal Revenue on

February 15, 1989 in the total amount of P741,259.92 (Annex "A", Petition for Review, p. 12, CTA records).

Without waiting for respondent to act on the claim for refund petitioner filed the instant petition for review on February 15, 1989, to prevent the running of prescriptive period set forth in Section 243 of the Tax Code.

The only issue to be resolved is whether or not petitioner is exempt from withholding tax on income from loan investment pursuant to Republic Act 4917 as implemented by Revenue Regulation 1-68 as amended.

The case at bar has been submitted for decision based on the pleadings and records of the case sans the memorandum of both parties.

Respondent maintains that the exemption from the final tax on interest on bank deposits and deposits substitute enjoyed by petitioner by virtue of the provision of Section 21(d) and 24(cc) of the Tax Code has been amended by Presidential Decree No. 1959, which took effect on October 15, 1984 and has for its effect the deletion or withdrawal of the exemption from tax enjoyed by petitioner under the above mentioned Section of the National

Internal Revenue Code. On the other hand, petitioner claimed that the income or yield derived from the fund collected from the loan investment are exempt from the 20% final tax; citing Section 1 of Republic Act No. 4917 which took effect on June 17, 1967, the pertinent part of which reads:

> "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 seizure by or under any legal or `equitable process whatsoever xxx." (Emphasis supplied)

in relation to Section 54(b) [now Section 53(b)] of the NIRC which provide as follows

> "Section 53. Imposition of Tax. - (a) Application of tax. - The tax imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust, including -
>
> xxx xxx xxx
>
> (b) 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 xxx."

To further support its claim for exemption from the 20% final tax, petitioner cited the letter of respondent dated June 28, 1983 stating that the income of the fund from investments is exempt from income tax within the contemplation of Republic Act No. 4917 (Exhibit B, p. 81, CTA records).

The question involved in this case is not of first impression.

In the very recent case of **Commissioner of Internal Revenue v. The Hon. Court of Appeals, the Court of Tax Appeals, GCL Retirement Plan, represented by its Trustee-Director** (207 SCRA 487, G.R. 95022, promulgated March 23, 1992) the Supreme Court decided *en banc*, that:

> "In so far as employees' trusts are concerned, the foregoing provision should be taken in relation to then Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, supra, which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and is repeated hereunder for emphasis"
>
> > `Sec. 56. Imposition of Tax. - (a) Application of tax. - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.
> >
> > `xxx xxx xxx
> >
> > `(b) 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 xxx.'
>
> "The tax-exemption privilege of employees' trusts, 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' trusts for tax exemption.

"And rightly, so, by virtue of the raison d'etre behind the creation of employees' trusts. Employees' trusts 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.

"xxx xxx xxx.

"It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law."

IN VIEW OF THE FOREGOING, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the sum of P741,259.92 representing the 20% final tax withheld.

SO ORDERED.

Quezon City, Metro Manila, April 16, 1993.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

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 Appeals