REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY,
as Trustee of Various Retirement Funds,
Petitioner,

- versus -

C.T.A. CASE NO. 5535

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 2 1 2000

x - x

DECISION

This is a petition which seeks the refund of the amount of P12,788,983.00 allegedly representing final taxes withheld from interest income earned on investments made by the Petitioner on money market placements, bank deposits, other deposit substitutes and government securities as trustee of various retirement plans for the years 1994 to 1996.

Petitioner is a banking corporation duly organized and existing under Philippine laws. Being engaged in trust and investment activities, it was appointed by several companies as trustee of their retirement funds under Investment Management Agreements/Trust Agreements executed by the parties (Exhs. A to A-70). The trust funds were put up by the companies to provide retirement, death, disability and separation benefits to the members of the companies' retirement plans which have met the requirements of the law to qualify as reasonable retirement plans within the contemplation of Section 29(b)(7)(A) [now Section 32(B)(6)(a)] of the Tax Code (Exhibits B to B-70).

For the period beginning the first quarter of 1994 up to the fourth quarter of 1996, Petitioner, acting pursuant to the trust agreements, invested the retirement funds in money market placements, bank deposits, other deposit substitutes and government securities. Thus, on the theory that the income earned by the funds was exempt from taxation, under the aforecited Section of the Tax Code, Petitioner filed various claims for refund with the Bureau of Internal Revenue, as follows:

Exh	Period Covered	Date filed with the BIR	Amount of Claim	Total Claim
	1994			
E	1st qtr.	30-Jan-95	P 3,881,043.65	
F	2nd qtr.	20-Sep-94	2,405,121.29	
G	3rd qtr.	17-Nov-94	1,475,341.00	
H	4th qtr.	26-Jan-95	952,371.24	P 8,713,877.18
	1995			
I	1st qtr.	01-Jun-95	P 514,661.74	
J	2nd qtr.	14-Nov-96	514,152.00	
J	3rd qtr.	14-Nov-96	615,617.90	
J	4th qtr.	14-Nov-96	222,879.74	1,867,311.38
	1996			
J	1st qtr.	14-Nov-96	P 440,248.60	
J	2nd qtr.	14-Nov-96	157,239.64	
K	3rd qtr.	12-Mar-97	672,262.09	
K	4th qtr.	12-Mar-97	938,044.88	2,207,795.21
			Total:	P 12,788,983.77

Respondent failed to act on Petitioner's claims. Hence, this Petition filed on June 24, 1997.

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

> "7. Petitioner's claim for tax refund is still undergoing administrative routinary investigation or examination by respondent Bureau;
>
> 8. Granting without admitting that petitioner erroneously and excessively paid the final withholding tax on its interest income, still the petitioner cannot be entitled thereto for the simple reason that its right has already prescribed. The second paragraph of Section 230 specifically provides:
>
> > "In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment... x x x"
>
> 9. Claims for tax refund or tax credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for refund or credit;
>
> 10. The taxes sought to be refunded in the case at bar have been duly collected in accordance with law and BIR rules and regulations."

On September 29, 1998, Petitioner filed an Omnibus Motion and Manifestation stating that inasmuch as the judicial claim for refund of final withholding taxes for the first, second, third and fourth quarters of the year 1994 totaling P8,713,877.00 was filed beyond the two-year prescriptive period, it is withdrawing such claim from the instant petition (p. 856, CTA records).

It is to be noted that the issue of whether or not the interest income of duly qualified retirement plans are exempt from the final withholding tax, has already been settled in favor of the Petitioner. In the case entitled Commissioner of Internal Revenue vs. Court of Appeals, 207 SCRA 487, the Supreme Court ruled in this wise:

> "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 employee's 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."

Based on the foregoing pronouncement of the Supreme Court, the Respondent in the instant case conceded that retirement funds are indeed exempt from the final withholding tax on interest income from money market placements, (p. 924, CTA records), thus the lone issue to be resolved is whether or not Petitioner is entitled to the relief sought on the basis of the evidence presented.

In its memorandum dated September 3, 1999, Petitioner stated that the claim for refund of P12,788,983.00 is considered to have been amended to P13,663,268.54 since Respondent did not timely object to the SGV Certification and testimony of Mr. David Balangue, Partner of SGV & Co. However, as correctly pointed out by Respondent also in its memorandum dated September 7, 1999, a party cannot claim beyond what is prayed for in the petition for review. Moreover, this Court wonders why Petitioner, after manifesting that it was withdrawing the amount of P8,713,877.00 due to prescription, still prays for the refund not only of its original claim of P12,788,983.00 but the higher amount of P13,663,268.54.

Records show, nonetheless, that out of the total claim for refund of P12,788,983.00, not only the amount of P8,713,877.00 but an additional sum of P514,661.74 pertaining to

Petitioner's claim for the first quarter of 1995 is also barred by prescription. Only the remaining portion of Petitioner's claim for refund amounting to P3,560,444.26 pertaining to the second quarter of 1995 to the fourth quarter of 1996 was timely filed within the two-year period provided for under Section 230 in relation to Section 51 of the Tax Code and reckoned from the date when the final withholding taxes should have been paid/remitted to the BIR, i.e., within twenty five days (25) after the close of the calendar quarter. Thus, counting from the 25^{th} day after the close of each calendar quarter covered by the instant petition to June 24, 1997, the date when the petition for review was filed, Petitioner's claim for refund insofar as the four quarters of 1994 and first quarter of 1995 had already prescribed.

We proceed to the remaining claim of P3,560,444.26. After a painstaking scrutiny of the evidence adduced by Petitioner, this Court finds that out of the said amount, Petitioner was able to substantiate only the sum of P2,004,032.85.

We would like to emphasize at this point that this Court's final conclusion shall have as reference point the amount of P13,663,268.54 based on the SGV certification minus the amount of P8,237,112.50 corresponding to the claims which were excluded due to prescription, resulting in the reduced amount of P5,426,156.04. The reason for using the slightly larger amount of P5,426,156.04 as reference point, as opposed to the remaining claim of P3,560,444.26 based on the Petition for Review is that the documents presented by Petitioner and from which SGV and Company based its final report originally referred to the higher sum of P13,663,268.54. This is necessary because our own study and subsequent conclusion will also be focused on the same documents and amount studied by SGV and Company. However, the final refundable amount should not exceed P3,560,444.26 as this amount is the one remaining of the actual claim mentioned in the Petition for Review.

For purposes of clarity, hereunder, is the table taken from the SGV Report as it relates to the remaining amount of P3,560,444.26:

	Per SGV & Co. Report							
	With Available TECs*			With No Available TECs*				
	With CERs or FICFRs	Without CERs or FICFRs	Total	With CERs or FICFRs	Without CERs or FICFRs	Total	Grand Total	Per Petition for Review
1995	1,126,050.66	434,787.23	1,560,837.89	299,955.38	9,726.17	309,681.55	1,870,519.44	1,352,649.26
1996	1,877,066.76	866,618.17	2,743,684.93	318,381.17	493,570.50	811,951.67	3,555,636.60	2,207,795.00
Total	3,003,117.42	1,301,405.40	4,304,522.82	618,336.55	503,296.67	1,121,633.22	5,426,156.04	3,560,444.26

*Tax Exemption Certificate

Based on the above data, the amount of P1,121,633.22 should be denied outright in view of Petitioner's failure to show proof that the retirement funds involved therein were tax-exempt as certified by the Bureau of Internal Revenue.

As to the remaining sum of P4,304,522.82 (P5,426,156.04 – P1,121,633.22), Petitioner was able to prove that the retirement funds covered under the said claim as enumerated in Exhibit III of the SGV Report were certified as tax-exempt by the BIR. The tax-exemption certificates, (Folder 1, containing TEC-1 to TEC–93, inclusive) including those filed under CTA Case No. 4848, supporting the retirement funds listed under Exh. III of the SGV report, were submitted by Petitioner. Having qualified as reasonable retirement plans, it follows then that the retirement funds created under these plans for which they were set up, are thus expressly exempt from income tax.

These retirement funds with available TECs are under trust with herein Petitioner as can be gathered from the records (Exhs. A to A-70; TEC-1 to TEC-3, TEC-5, TEC-6, TEC-8, TEC-9, TEC-12, TEC-13, TEC-15, TEC-16, TEC-18 to TEC-20, TEC-22, TEC-23, TEC-25 to TEC-30, TEC-33 to TEC-79, TEC-81, TEC-82, TEC-84 to TEC-87, TEC-89 to TEC-92, inclusive; TSN, October 9, 1997, p.10) except for the following which are included in the total amount of P1,301,405.40 whose transactions are not supported by Collection Execution Reports (CERs) or Fixed Income Collection Final Reports (FICFRs):

Exh.	Retirement Fund	Trust Acct . No.	Tax Refund Claim W/o CERs or FICFRs 1996
TEC-4	Sea Commercial Co., Inc. Emp. Ret. Plan	201-00029	P -
TEC-7	The Netherlands Insurance Co. Emp. Ret. Plan	201-00099	-
TEC-10	Blue Bar Coconut Phils., Inc. Ret. Plan	201-00142	628.19
TEC-11	California Manufacturing Co., Inc. Emp. Ret. Plan	201-00150	186.83
TEC-14	Hoechst Group of Companies Emp. Ret. Plan	202-00005	15,962.50
TEC-17	Centro Escolar University	203-00008	141.65
TEC-21	Tag Fibers, Inc. Emp. Ret. Plan	203-00025	56.44
TEC-24	Int'l Inst. of Rural Reconst. Emp. Ret. Plan	203-00048	73.50
TEC-31	Phil. Clearing House Corp. Emp. Ret. Plan	203-00111	1,141.60
TEC-32	Telefunken Semicon (Phils.), Inc. Emp. Ret. Plan	203-00122	4,737.24
TEC-80	Central Philippine University Emp. Ret. Plan	341-00026	277.10
TEC-83	SGV & Co. Provident Fund	341-00051	44,773.61
TEC-88	Gullas College of Medicine Ret. Plan	341-00106	65.28
TEC-93	Tropical Hut Provident Fund Plan	341-00131	-
	Dizon Copper Silver Mines, Inc.	203-00244	6,095.88
	NER Industrial Services Corp. Ret. Plan	203-00273	57.36
	Medical City General Hospital Ret. Plan	203-00345	162.75
		Total:	P 74,359.93

However, SGV & Co. further classified the claim pertaining to these retirement funds with available TECs of P4,304,522.82, into those transactions which are supported by CERs (Collection Execution Reports) or FICFRs (Fixed Income Collection Final Reports) amounting to P3,003,117.42 and those transactions which are not supported by CERs or FICFRs in the amount of P1,301,405.40. The said auditing firm submitted a breakdown of the said amounts (annexed in its report as Exhibits VII & VIII) indicating details such as trust account number, value date, maturity date, instrument date, principal, interest rate (net), term, gross interest income and the corresponding 20% final tax for each of the three years, 1994 to 1996 under each retirement fund account.

With reference to the sum of P1,301,405.40 pertaining to retirement funds with available TECs but whose transaction amounts were not supported by CERs or FICFRs, the same cannot be verified based solely on the 1995 and 1996 annual financial statements of the involved retirement funds. Although the amounts of interest income in the retirement funds' annual income statements are shown in accordance with the type of investments made, these amounts are already the summation of the retirement funds' individual income transactions for each year. The accuracy of the retirement funds' interest income (net of the 20% final tax) cannot be determined without checking on the source documents showing the particular items making up the total net interest income shown in the annual income statements. Moreover, the amounts being claimed by Petitioner do not tally with those shown in the retirement funds' annual income statements. The reported interest income in the retirement funds annual income statements were either higher or lower than the amounts being claimed by Petitioner.

Thus, the claimed final withholding taxes of P1,301,405.40 pertaining to retirement funds with available TECs but which are not supported by CERs or FICFRs should be disallowed.

What is now left to be determined is whether or not the retirement funds with available TECs with corresponding claim of P3,003,117.42 actually earned interest income from investments made by Petitioner on their behalf and from which 20% final taxes were withheld.

Records show that the basic documents evidencing the investment purchases made by Petitioner's Trust Banking Group on behalf of the retirement funds are placement conforme, placement execution reports, confirmation of sale and custodian agreements issued by petitioner's Unified Treasury Group or seller of the securities and that the documents evidencing the collection of interest income by petitioner's Trust Banking Group for the retirement funds are collection execution reports and fixed income collection final reports (Exh. V of the SGV Report [Exh. R], TSN, January 6, 1999, pages 8-12, 16-17). Petitioner did not present the documents evidencing its purchase of investments on behalf of the retirement funds although it submitted documents evidencing the collection of interest income as a result of the investments it made on behalf of the tax-exempt retirement funds with corresponding claim of P3,003,117.42 such as Collection Execution Reports (CERs, Folder 2 containing CER-001 to CER-236, inclusive), Fixed Income Collection Final Reports (FICFRs, Folder 3 containing FICF-001 to FICF-043, inclusive) and Fixed Income Collection Reports (PERs, Folder 4 containing PER-1 to PER-467, inclusive). These documents prove that the tax-exempt retirement funds actually earned interest income on certain investments made by Petitioner on their behalf for 1995 and 1996.

Likewise, CERs and FICFRs and Exhibits VII & VIII of the SGV Report show that the claimed amount of P3,003,117.42 represents final taxes withheld on interest income earned by the concerned tax-exempt retirement funds from investments in Citibank Promissory Notes, Floating Rate Treasury Notes (FRTN), Investment in Savings Deposits (ISD) and Treasury Bills for the the years 1995 and 1996 summarized as follows:

	1995	1996	Total
Citibank PN-ISD	P -	P70,769.80	P P70,769.80
FRTN	155,154.85	117,683.81	272,838.66
ISD	-	70,769.80	70,769.80
TBILL-MMD/S TBILL-MMD	393,923.42	1,610,109.43	2,004,032.85
TBILL-FEBII	576,972.36	7,733.95	584,706.31
TOTAL	P1,126,050.63	P1,877,066.79	P 3,003,117.42

Of the above total final withholding taxes of P3,003,117.42, Petitioner was able to prove the actual withholding and remittance to the BIR of only the amount of P2,004,032.85 representing final taxes withheld on the interest income of tax-exempt retirement funds from TBill-MMD/STBill-MMD based on the Certifications issued by BSP to petitioner for 1995 and 1996 (Exhs. Q to Q-3, inclusive). Petitioner failed to prove the actual withholding and remittance to the BIR of the rest of the final withholding taxes indicated above in the amount of P999,084.57. Although Petitioner submitted a Certification from Citibank's Government Securities Department (Exhs. L to L-2, inclusive), the amounts of final taxes indicated therein pertain to those withheld and remitted by Citibank to the BIR for the year 1995 for which Petitioner did not include in its claim and nothing was certified by Citibank for the year 1996. Petitioner did not submit any certificate of final taxes withheld with respect to the final withholding taxes on interest income earned by tax-exempt retirement funds from Floating Rate Treasury Notes for 1995 and 1996.

As regards the Certification from Petitioner's own Trust Banking Group-Operations (Exh. D), the amount of P8,293.87 final taxes indicated in the certification does not reconcile with the 1996 withholding taxes from Investments in Savings Deposits (ISD) of P70,769.80 shown above.

Finally, as to the final withholding taxes of P584,706.31 from interest income on TBills-FEBII of the tax-exempt retirement funds, Petitioner failed to prove the actual withholding/remittance of the same . Since these final taxes were withheld on investments indicated in the CERs/FICFRs and in the SGV Report (annexed as Exhibits VII & VIII) as *TBILL-FEBII,* these TBills may have been bought by petitioner on behalf of the retirement funds not from petitioner's own Unified Treasury Group but from Far East Bank and Investments Inc. (FEBII) which is a separate and distinct entity from herein petitioner. Inasmuch as the BSP Certifications pertain only to those final taxes withheld from T-Bill purchases made by Petitioner (Far East Bank & Trust Co.), it cannot be said that these certifications include the final withholding taxes of P584,706.31 on the interest income from T-Bill-FEBII of the tax-exempt retirement funds.

WHEREFORE, viewed in the light of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** to Petitioner the amount of P2,004,032.85 representing final taxes withheld on interest income earned from T-bills by tax-exempt retirement funds for the second, third and fourth quarters of 1995 and the four quarters of 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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