REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNIVERSAL MALAYAN REINSURANCE CORPORATION (formerly Malayan Reinsurance Corporation),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 6
(C.T.A. Case No. 6471)

Present:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ:*

Promulgated:

MAR 28 2005

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DECISION

UY, *J.:*

This is a Petition for Review before the Court of Tax Appeals *en banc* filed on May 20, 2004 under Republic Act No. 9282, seeking a review of the resolutions rendered by the then Court of Tax Appeals, which under R.A. 9282, is now a Division of the current Court of Tax Appeals, in C.T.A. Case No. 6471, entitled " Malayan Reinsurance Corporation (formerly Eastern General Reinsurance Corporation) v. Commissioner of Internal Revenue", to wit:

1) Decision promulgated on January 26, 2004 denying petitioner's claim for refund and/or tax credit certificate for the erroneous withholding of tax by the Bureau of Treasury on interest payments made to the petitioner in connection with the latter's purchase of treasury notes with a maturity of more than five (5) years in the total amount of Five Hundred Forty Eight Thousand Seven Hundred Fifty Pesos (P 548,750.00);

2. Resolution promulgated on May 3, 2004 denying petitioner's Motion for Reconsideration of aforesaid Decision.

The undisputed facts are as follows.

Petitioner purchased treasury notes issued by the Bureau of Treasury sometime in 1996 with the following details:

Treasury Notes	ISIN No	Issue Date	Maturity Date	Principal	Interest Rate	Semi-Annual Int. Payment
FXTN 7-2	PIBDO703BO29	29 Feb 96	28 Feb 03	5,000,000	15.375%	P 384,375
FXTN 10-1	PIBD1006I010	26 Sep 96	26 Sep 06	5,000,000	16.00%	P 400,000

For the period covering August 30, 2000 to September 27, 2001, the Bureau of Treasury paid interest for the said treasury notes to petitioner and withheld taxes on such interest paid at the rate of 20% of the interest income in the total amount of Five Hundred Forty Eight Thousand Seven Hundred Fifty Pesos (P 548,750.00). Consequently, petitioner wrote a letter to respondent on April 18, 2002 requesting for a refund of said amount which corresponds to taxes withheld by the Bureau of Treasury on the subject treasury notes relying on BIR Ruling No. 166-99 (October 25, 1999) which opined that interest income realized from government securities with a maturity of more than five (5) years are exempt from withholding tax. Respondent's inaction on this letter claim for refund constrained petitioner to timely file a petition for review on April 29, 2002 before the then Court of Tax Appeals.

In the assailed Decision subject of this petition, petitioner's claim for refund was denied for lack of merit on January 26, 2004. Petitioner's Motion for Reconsideration assailing said Decision was likewise denied for lack of merit on May 3, 2004.

Hence, this recourse.

In support of this petition for review, petitioner advances the following arguments:

A. **The Legislative Intent is to Encourage Investments in Long-Term Bonds** - Congress found it beneficial for the economy to entice investors to invest in long-term securities and the only plausible and reasonable interpretation of Sec. 32 (B)(7)(g) would be to exempt all forms of gains realized from sale, exchange or retirement of long-term bonds, including interest income realized in relation to the issuance of such long-term bonds.

B. **Interest realized as a result of the Primary Sale of Long-Term Bonds Constitute Gains derived from the Sale of Long-Term Bonds** – The tax exemption under Sec. 32 (B) (7) (g) refers to all "gains" realized from the sale, exchange or retirement of long term bonds because said section is broad enough to cover gains realized by the buyers, as well, particularly in the form of interest income realized from the primary sale of the long-term bonds.

C. **CTA Division's Decision Would Result in an Absurd Situation** - A situation would arise wherein interest income derived from a coupon-bearing bond would be subject to income tax, but interest income from zero-coupon bonds would be exempt from income tax.

D. **CTA Division's Decision Would Only Frustrate the Legislative Intent** – In enacting Sec. 32 (B)(7)(g), it is the intent of congress to encourage investments in long-term securities but the assailed Decision attempts to limit the term "gain" to income derived from selling the FXTN's which would frustrate the legislative intent in enacting said provision.

E. **The term "gain" should be understood in a generic and not in the restrictive sense** – Statutory language must be interpreted in a generic sense and should be given its usual and commonly understood meaning. If Congress had intended to exempt *interest* from bonds, debentures and other certificates of indebtedness under Sec. 32 (B)(7)(g) of the 1997 Tax Code, it would have done so in clear and specific terms.

Respondent filed a Comment/Opposition to the instant petition on January 5, 2005 alleging that the CTA Division is correct in saying that gains and interests fall under separate and distinct income categories. Gains realized from sale or exchange of retirement bonds, debentures and other certificates of indebtedness would fall under the category of "gains derived from dealings in property" whereas interests would include interests from bonds, debentures and other certificates of indebtedness. It is only the "gains realized from the sale or exchange of retirement of bonds, debentures or other certificate of indebtedness with a maturity of five (5) years" that is excluded from gross income and thus exempt from income tax under Sec. 32 (B) (7) (g) of the 1997 Tax Code.

Petitioner, in the instant petition for review, submits a lone assignment of error, to wit:

> THE CTA DIVISION ERRED IN RULING THAT THE TERM "GAIN" AS USED IN SECTION 32(B)(7)(g) OF THE TAX CODE DOES NOT INCLUDE INTEREST.

In the case of Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 69224, November 15, 2002, the Court of Appeals sustained the Court of Tax Appeals on the issue of whether or not the "gain", as used in Section 32(B)(7)(g) of the National Internal Revenue Code of 1997, includes interest. To quote:

> The CTA is absolutely correct. Income is the flow of money to an individual or corporation within a specified time, as payment for services, interests, or profits from investments. Income is the return in money from one's business, labor or capital invested. The famous analogy used by the Supreme Court described property, labor and capital as trees and income as their fruits. Thus, income is synonymous with profit or gain. Nippon used this general concept of income or gain to include interest within the meaning of Section 32(B)(7)(g). This strained interpretation suffers from serious flaws.
>
> First, while the Tax Reform Act adhered to the above definition of income, it also classified income into the following categories: compensation for services, income derived from the conduct of business or exercise of profession, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, prizes and winnings, pensions, and a partner's distributive share from net income of a general professional partnership. Section 32(B)(7)(g) clearly refers to gains realized from the sale, exchange or retirement of bonds, among others, with a maturity date of more than five (5) years. There

> is no reason to confuse gains from sale of bonds with gains in the general sense of income. Nippon argued that the law did not qualify the term "gains" but it is impossible not to see that the law did qualify such term and restricted it to gains from sale of bonds.
>
> Section 32(B) enumerates the exclusions from gross income. Exclusions, like tax exemptions, are highly disfavored in law. A person claiming a tax exemption must justify his claim by the clearest terms possible because an exemption from the common burden of taxation is not allowed upon vague implications but on language too plain, to be mistaken. In the instant case, Nippon's claimed exclusion runs counter to the plain, unequivocal language of the law. It resorted to the legislative intent behind the provision to justify departure from the literal meaning but we all know this is prohibited. The only intent that must be given effect is the one expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To depart from the meaning expressed by the words of the statute is to alter the statute and legislate, not to interpret. A statute which is plain, clear and free from doubt is not subject to construction; there is no need for interpretation, only application.
>
> In enacting the Tax Reform Act, the legislature may have intended to develop the capital market and encourage savings in long-term investments but even under the restrictive interpretation that gains under the subject provision means gains from sale of bonds, debentures and other certificates of indebtedness, such legislative intent still finds full expression. Section 32(B)(7)(g) as written and as interpreted by the CTA is still an incentive to the development of the bond market because it excludes gains from sales from the computation of the gross income. This may not be as sweeping as Nippon would have wanted to but it is an incentive nonetheless, which is faithful to the legislative intent. Nippon's all or nothing stance on the exclusion of gains from bonds finds no support in either the language or intent of the law.

This ruling was already **AFFIRMED** by the Supreme Court in a resolution promulgated on November 19, 2003 in the case of ***Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 159612, with Entry of Judgment dated January 6, 2004***.

In the light of the foregoing jurisprudence, it is clear that only "gain" from the sale of bonds, debentures or other certificates of indebtedness with maturity of more than five (5) years (as distinguished from interest), shall be exempt from income tax, while interest income earned from investments in long-term fixed rate treasury notes are subject to 20% withholding tax.

To this Court's mind, even under this restrictive interpretation of gains, the legislative's intent to encourage investment in long-term bonds is still subserved, as gains from the sales of long-term bonds, debentures or certificate of indebtedness with a maturity of more than five (5) years, are excluded from the computation of gross income.

Lastly, petitioner's assertion that "gain" should be understood in a generic and not in a restrictive sense cannot be allowed in this case considering that gains and interests fall under separate and distinct income categories. As correctly pointed out by respondent, Gains realized from sale or exchange of retirement bonds, debentures and other certificates of indebtedness would fall under the category of "gains derived from dealings in property" whereas interests would include interests from bonds, debentures and other certificates of indebtedness. It is only the "gains realized from the sale or exchange of retirement of bonds, debentures or other certificate of indebtedness with a maturity of five (5) years" that is excluded from gross income and thus exempt from income tax under Sec. 32 (B) (7) (g) of the 1997 Tax Code.

All the foregoing considered, this Court En Banc finds no reversible error committed in the Decision of January 26, 2004 and Resolution of May 3, 2004.

WHEREFORE, the instant petition is hereby **DENIED** for lack of merit, and the assailed Decision of January 26, 2004, and Resolution of May 3, 2004, are hereby **AFFIRMED** *in toto*.

SO ORDERED.

ERLINDA P. UY
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice