REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4972

Promulgated:
JAN 24 1996

x - x

DECISION

This is a claim for the refund of alleged unapplied creditable withholding taxes on acquired assets for taxable year 1990 and 1991 in the total amount of P755,715.00.

Petitioner is a domestic banking corporation duly organized and existing under and by virtue of Philippine laws.

In the early part of 1992, the Cavite Development Bank (CDB), also a domestic banking corporation was merged with the Petitioner with the latter as its surviving entity. With the merger, Petitioner being the surviving entity, acquired all assets of CDB.

During the period from 1990 to 1991, CDB sold some acquired assets in the course of which, it allegedly withheld the creditable tax from the sales proceeds which amounted to P755,715.00.

In said years, CDB filed income tax returns which reflected that CDB incurred negative taxable income or losses for both years. Since there was no tax against which to credit or offset the taxes withheld by CDB, the result was that CDB, according to Petitioner had excess creditable withholding tax.

Thus, Petitioner being the surviving entity of the merger, filed this Petition for Review after its administrative claim for refund was not acted upon.

Is Petitioner legally entitled to its claim for refund?

We answer in the negative.

In its Petition for Review and in the Memorandum, Petitioner alleged that CDB withheld the creditable withholding taxes from the sales proceeds of its acquired assets. It would seem, therefore, from the allegation <u>that CDB was the taxpayer (recipient of the income) and the withholding agent at the same time of its own transactions</u>. In fine, they are one and the same. Although it can, of course, be argued that the Tax Code does not specifically prohibit the taxpayer from withholding its own tax, yet, this Court finds it rather amusing as it is not in accordance with the normal practice. Under the facts presented, CDB as seller of capital assets is really the one liable to pay the creditable withholding tax. Thus, We see no reason why CDB cannot pay for the tax it is responsible to pay in the first place under the expanded withholding tax system.

However, in the case at bar, petitioner did not pass the Court's scrutiny in proving its claim for refund. The documents presented by the Petitioner were not sufficient to warrant that CDB withheld and remitted the withholding taxes corresponding to its own sale of capital assets. The various Central Bank confirmation receipts and BIR official receipts and payment orders presented by petitioner (Exhs. "I" to "I-36"), although all in the name of CDB, are not conclusive evidence as to the actual payment and remittance of the withholding taxes pertaining to the sale of CDB's capital assets. The existing doubts are due to the following:

1. The amount of income payments received by CDB cannot be ascertained by the mere presentation of confirmation receipts. The BIR Form 1743.1 is needed, as required under Sec. 10, Rev. Regs. 6-85 of the expanded withholding tax regulations, for the purpose or at the

very least the annual return (i.e., reconciliation statement of quarterly payments and list of payees and income payments), required under Sec. 51(d) of the Tax Code, to be submitted to the Commissioner of Internal Revenue wherein the Court can check if the said payments of tax are indeed done by the CDB for its own account by listing its own name as one of the recipients of the tax it paid.

2. It can not be well said that the amounts paid and remitted to the BIR were for CDB's account and not for the other possible payees of withholding taxes which CDB may also be liable to remit as a withholding agent.

3. Some confirmation receipts and payment orders even refer to payments of capital gains tax (Exhs. "I-4" to "I-7", inclusive) while others were not readable (Exhs. "I-21", "I-35"). This contradicts the claim of Petitioner that the withholding are for creditable withholding tax at source under the expanded withholding tax system, Revenue Regulations No. 6-85. Moreover, corporations are not even required to pay in advance, by way of withholding, tax on capital gains.

From among the requirements set forth in claiming for the refund of excess creditable withholding taxes which are:

> 1. that it (petitioner) filed a claim for refund within the two (2) year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;
>
> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom. (Sec. 10, Rev. Regs. 6-85; Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue v. Court of Tax Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994).

only requirement number one was satisfactorily met by the Petitioner. The second and third requirements were not. Petitioner failed to show that the income (portion) upon which the taxes (creditable) were withheld were included in its return. Thus, the Court cannot ascertain whether the income pertaining to the alleged creditable withholding taxes were included in the 1990 and 1991 income tax returns of CDB which the Petitioner submitted in evidence. Petitioner also fell short in complying with the third requirement when it did not present the BIR Form 1743.1 required by Revenue Regulations No. 6-85.

Well-settled is the rule that claim for refund, being in the nature of an exemption from taxation, must be strictly construed against Petitioner (Insular Lumber Co. v. Court of Tax Appeals, 104 SCRA 710 [1981]) and failure to do so would be fatal to its claim.

Based on the foregoing, We therefore, cannot grant Petitioner's claim for refund as it miserably failed to sufficiently support its alleged right to the refund sought.

WHEREFORE, Petitioner's claim for refund is hereby DENIED for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

DECISION
C.T.A. CASE NO. 4972

CERTIFICATION

I hereby certtify 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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals