REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLDT CLARK TELECOM, INC.
(formerly Clark Telecommunications
Company Inc.),
Petitioner,

- versus - **C.T.A. CASE NO. 6176**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 16 2002

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DECISION

This Petition for Review involves a claim for refund or issuance of tax credit certificate in the amount of P3,666,201.05 (*which petitioner subsequently increased to P4,751,856.21*) allegedly representing overpaid final withholding tax on petitioner's interest income from Philippine currency bank deposits and placements for the period September 1998 to June 2000.

The antecedent facts follow.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Building 5665, corner Ninoy Aquino Ave. & Manuel A. Roxas Highway, Clark Field, Pampanga. It is formerly known as Clark Telecommunications, Inc., having amended its Articles of Incorporation to change its name to PLDT Clark Telecom Inc. *(Stipulated Fact, Item No. 1.07, p. 46-C)*.

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Petitioner is duly registered with the Clark Development Corporation (CDC) as a Clark Special Economic Zone (CSEZ) enterprise and is engaged in providing basic and enhanced telecommunication services within the CSEZ and between CSEZ and other cities, provinces and municipalities in the Philippines and other countries and territories *(Stipulated Fact, Item No. 1.06, CTA docket, pp.46-B to 46-C)*. As a CSEZ-registered enterprise, petitioner is entitled to a preferential tax rate of 5% of gross income earned in lieu of all taxes pursuant to Republic Act No. 7227, otherwise known as the Bases Conversion Act (BCDA Law), Revenue Regulations No. 1-95 and BIR ruling No. 149-99 dated September 17, 1999 *(Stipulated Fact, Item No. 1.08, CTA docket, p. 46-C)*.

From September 1998 to June 2000, petitioner earned interest income from its Philippine currency bank deposits and placements with Equitable PCI Bank (EPCIB) in the total amount of P24,441,407.00. According to petitioner, EPCIB withheld a 20% final tax on said interest income instead of the preferential tax rate of 5% granted to CSEZ-registered companies.

The total amount of taxes withheld by EPCIB at the rate of 20% amounted to P4,888,281.40 while the total amount of taxes which should have been withheld at the preferential rate of 5% amounts to P1,222,070.35. Thus, petitioner alleged that for the period September 1998 to June 2000, EPCIB has erroneously paid or overpaid the final withholding tax on petitioner's interest income from Philippine currency deposits and placements the total amount of P3,666,201.05, computed as follows:

Savings Account

Year	Gross Interest	Tax at 20%	Tax at 5%	Tax Refund
	(a)	(b)	(c)	b – c = (d)

1998	P 86,557.17	P 17,311.43	P 4,327.86	P 12,983.58
1999	554,131.35	110,826.27	27,706.57	83,119.70
2000	169,615.26	33,923.05	8,480.76	25,442.29
Subtotal	P 810,303.78	P 162,060.76	P 40,515.19	P 121,545.57
Placements				
Year				
1998	P 9,474,223.93	P 1,894,844.79	P 473,711.20	P 1,421,133.59
1999	12,704,509.26	2,540,901.85	635,225.46	1,905,676.39
2000	1,452,370.03	290,474.01	72,618.50	217,855.50
Subtotal	P 23,631,103.22	P 4,726,220.64	P 1,181,555.16	P 3,544,665.48
GRAND TOTAL	**P 24,441,407.00**	**P 4,888,281.40**	**P 1,222,070.35**	**P 3,666,211.05**

On September 21, 2000, petitioner formally filed with the Bureau of Internal Revenue an administrative claim for the refund of its overpaid or erroneously paid withholding tax on interest income on Philippine currency bank deposits in the amount of P10,655,784.88 covering the period 1997 to 2000.

As there was no action on the part of the respondent, petitioner filed the instant petition on October 5, 2000 to toll the running of the two-year prescriptive period.

In his answer filed on October 27, 2000, respondent raised the following special and affirmative defenses, to wit:

1. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;

2. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

3. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

4. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

5. Moreover, petitioner must show compliance with the provisions of Section 204 (c) and 229 of the Tax Code, as amended;

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6. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et. al., 64 SCRA 555).

During the hearing of this case on January 15, 2001, petitioner's Chief Accountant and Administrative Head, Ms. Carolina Sicat, testified that the total overpayment made on the interest earned for the period September 1998 to June 2000 is actually P4,751,856.21 consisting of P4,623,440.44 for placements and P128,415.77 for savings accounts. Said witness claimed that there was an error in the amount claimed in the petition for review because there were overpayments of final withholding tax in interest which were not included in the petition. Hence, in its memorandum, petitioner changed its claim for refund from P3,666,201.05 to P4,751,856.21.

This case entails the resolution of the following issues, which were stipulated upon by the parties, thus:

> 1. Whether or not petitioner has overpaid final withholding tax on interest income on Philippine currency bank deposits for the period from September 1998 to June 2000 in the amount of P 3,666,211.05;
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> 2. Whether or not the overpaid final withholding tax on interest income on Philippine currency bank deposits for the period from September 1998 to June 2000 is substantiated by documentary evidence; and
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> 3. Whether or not petitioner is entitled to a refund of the overpaid final withholding tax on interest income on Philippine currency bank deposits for the period from September 1998 to June 2000 in the amount of P3,666,211.05.

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Prefatory to the resolution of the first issue, it is important to determine first whether petitioner, as a CSEZ enterprise, is entitled to the preferential rate of 5% as provided by law.

Records would reveal that petitioner was issued Certificate of Registration No. 97-28, dated April 15, 1997, as a duly registered Clark Special Economic Zone (CSEZ) enterprise *(Annex B, Petition for Review, CTA docket, p. 11)*. Appurtenant thereto, it was also issued a certificate of tax exemption *(Annex C, Petition for Review, CTA docket, p. 12)* entitling him to tax and duty-free importation of capital goods, equipment, raw materials and supplies and household and personal items exempt from local and national taxes.

As a duly-registered CSEZ enterprise, petitioner is entitled to all incentives granted pursuant to Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992" (the "BCDA Act") and its implementing rules and regulations. In Section 12 (c) of RA 7227, the law provides for a 5% preferential tax incentive to those business and enterprises registered within the Subic Special Economic Zone, thus:

> "SECTION 12. x x x
>
> (c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic

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> Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas."

While the foregoing law applied only to SSEZ-registered enterprises, Executive Order No. 80, however, has extended the coverage of the said tax incentives even to CSEZ registered enterprises. By virtue of EO No. 80 dated April 1993, the Clark Development Corporation (CDC) was established as the implementing arm of the Bases Conversion and Development Authority (BCDA) to manage the CSEZ. E.O. No. 80 actually confirmed the applicability of the tax incentives enjoyed by SSEZ-registered enterprises also to CSEZ-registered enterprises, such that CSEZ-registered enterprises are likewise entitled to the 5% preferential tax rate based on gross income earned, in lieu of local and national taxes. Section 5 of Executive Act No. 80 provides:

> "SECTION 5. Investment Climate in the CSEZ. –
>
> xxx xxx xxx
>
> Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments law which may hereinafter be enacted."

Thus, other tax incentives, such as those under Section 43 of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority under Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992" and under Section 6(f) of Revenue Regulations No. 1-95, can also be applied to CSEZ-registered enterprises by virtue of the said EO No. 80. Section 43 of the said rules provides that a

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registered enterprise shall pay a final tax of five percent (5%) of gross income earned in lieu of paying taxes, thus:

> "SECTION 43. Tax Exemption. – SBF Enterprises shall be exempt from all national and local taxes, including but not limited to the following:
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> xxx xxx xxx
>
> In lieu of paying taxes, all SBF Enterprises shall pay a final tax of five (5%) percent of gross income earned in accordance to breakdown specified and defined under Section 57 hereunder."

Likewise, Section 6(f) of Revenue Regulations No. 1-95 explicitly provides that interest from any Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust fund and similar arrangements received by a registered enterprise engaged in business within the Secured Area shall be subject to the 5% preferential tax rate, thus:

> "f. Interest from any Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust fund and similar arrangements received by a registered enterprise engaged in business within the Secured Area shall be subject to the preferential tax rate. xxx"

It is also significant to state that respondent's own BIR Ruling No. 149-99 dated September 17, 1999 also enunciated the same view regarding the preferential tax treatment enjoyed by the CSEZ-registered enterprise, thus:

> "It is clear from the above-cited section that enterprises registered within the secured area of Subic and Clark Special Economic Zones are liable to the preferential tax treatment of 5% of

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> the gross income earned which shall be in lieu of local and national taxes pursuant to Section 12(c) of R. A. 7227, they are therefore exempt from the final tax of 20% and 7.5% respectively imposed on the amount of interest from currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties from sources within the Philippines and the interest income they will derive from a depository bank under the expanded foreign currency deposit system as prescribed under Section 27(D)(1) of the Tax Code of 1997."

Hence, based on all the foregoing, this court is convinced that petitioner's interest income arising from Philippine currency bank deposits and other placements with Equitable PCI Bank are subject to final withholding tax at the preferential rate of 5% instead of the regular rate of 20%.

We now proceed to the substantiation aspect.

To prove its entitlement to the claim for refund, petitioner presented several documents including, among others, the PCI Bank Saving Account Passbook under the name of Clark Telecom Co., Inc., Clark Branch (*Exhibits A and B-9 to B-16*) and PCI Bank Savings Account Passbook under the name of Clark Telecom Co., Inc., Ayala Branch (*Exhibits A-1 and B-1 to B-8*).

Upon scrutiny of the aforementioned documents, this court finds that petitioner was able to establish that it had overpaid its final withholding tax on interest income on Philippine currency bank deposits for the period from September 1998 to June 2000 in the amount of P128,415.77. It was ascertained that the said banks used the 20% withholding tax rate on interest income claimed by petitioner instead of the 5% preferential tax rate, the computation of which is shown below:

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SAVINGS ACCOUNT

I. AYALA BRANCH

DATE	GROSS INTEREST	WITHHOLDING TAX 20%	WITHHOLDING TAX 5%	TAX REFUND
9/30/1998	P 30,911.91	P 6,182.38	P 1,545.60	P 4,636.79
12/29/1998	32,956.05	6,591.21	1,647.80	4,943.41
3/31/1999	11,792.61	2,358.52	589.63	1,768.89
6/30/1999	25,826.67	5,165.33	1,291.33	3,874.00
9/30/1999	9,356.82	1,871.36	467.84	1,403.52
12/29/1999	5,676.18	1,135.24	283.81	851.43
3/31/2000	6,354.93	1,270.99	317.75	953.24
6/30/2000	7,016.25	1,403.25	350.81	1,052.44
Subtotal	**P 129,891.42**	**P 25,978.28**	**P 6,494.57**	**P 19,483.71**

II. CLARK BRANCH

DATE	GROSS INTEREST	WITHHOLDING TAX 20%	WITHHOLDING TAX 5%	TAX REFUND
9/30/1998	P 10,160.70	P 2,032.14	P 508.04	P 1,524.11
12/29/1998	33,169.65	6,633.93	1,658.48	4,975.45
3/31/1999	58,998.69	11,799.74	2,949.93	8,849.80
6/30/1999	59,675.91	11,935.18	2,983.80	8,951.39
9/30/1999	127,991.61	25,598.32	6,399.58	19,198.74
12/29/1999	107,912.34	21,582.47	5,395.62	16,186.85
3/31/2000	169,615.26	33,923.05	8,480.76	25,442.29
6/30/2000	158,689.56	31,737.91	7,934.48	23,803.43
Subtotal	**P 726,213.72**	**P 145,242.74**	**P 36,310.69**	**P 108,932.06**
Total	**P 856,105.14**	**P 171,221.03**	**P 42,805.26**	**P 128,415.77**

With respect to the amount of P4,623,440.43 representing the alleged tax withheld by Equitable PCI Bank on interest income on placement, petitioner also proved its entitlement thereto by presentation of various documents such as the schedule of overpaid withholding tax on interest income on placements (*Exhibit C*), Confirmation of Sale Without Recourse (*Exhibits C-1 to C-7*), Investment Savings Agreement drawn by the petitioner and Equitable PCI Bank (*Exhibit C-108*) and Transmittal Sheets of Quarterly Remittance Return of Final Income Taxes Withheld on Interest on Peso Deposit and Interest on FCDU (*Exhibits D to K*), computed as follows:

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	GROSS INTEREST	WITHHOLDING TAX 20%	5%	TAX REFUND
1998	P 15,474,137.48	P 3,094,827.70	P 773,706.92	P 2,321,120.62
1999	13,567,261.55	2,713,452.31	678,363.08	2,035,089.23
2000	1,781,537.20	356,307.44	89,076.86	267,230.58
TOTAL	**P 30,822,936.23**	**P 6,164,587.45**	**P 1,541,146.86**	**P 4,623,440.43**

The above computation was corroborated by the testimonial evidence of petitioner's witnesses in the persons of Carolina G. Sicat, Chief Accountant and Administrative Head of PLDT Clark Telecom Inc.; Cecille Soriano, Operations Officer of Equitable PCI Bank, Makati Branch; and Lillora Hipolito, Branch Head of Equitable PCI Bank Conception, Tarlac Branch of the Equitable PCI Bank, who testified on the propriety and truthfulness of the amounts stated therein and their remittance to the Bureau of Internal Revenue. *(TSN dated January 15, 2001 and February 13, 2001)*.

However, this court cannot grant the amount of P4,751,856.21 being claimed by petitioner in its memorandum. It bears emphasis that the amount could not be increased to P4,751,856.21 without correspondingly amending the claim for refund with the Bureau of Internal Revenue, pursuant to the provisions of Section 229 of the Tax Code, as well as the petition for review. Although it was noted that the amount of the administrative claim for refund filed with the Bureau of Internal Revenue was P10,655,784.88, the same is not conclusive to cover the higher amount of P4,751,856.21 since the administrative claim covers the period from 1997 to 2000, as compared to the period subject of the present case which is September 1998 to June 2000. Thus, it cannot be inferred that the P10,655,784.88 includes that of the higher amount being sought. It should be emphasized that this court's jurisdiction is appellate in nature and only those claims filed in the administrative level deserve its review.

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WHEREFORE, in view of all the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED** to **REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P 3,666,211.05 representing overpaid final withholding tax on interest income earned by the latter on Philippine currency bank deposits and placements for the period September 1998 to June 2000.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

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