LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4813

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 01 1997

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DECISION

This is a petition for review filed by Rizal Commercial Banking Corporation in behalf of the PLDT Beneficial Trust Fund (PLDT Fund for brevity), seeking to recover the amount of P6,585,408.71 representing alleged erroneously paid withholding taxes covering the period from October 15, 1984 to December 31, 1991.

The antecedent facts of the case are as follows:

Petitioner, a banking corporation organized and existing under Philippine laws, is engaged in the business of expanded commercial banking and is duly licensed to engage in trust operations. On October 22, 1970, by virtue of an Investment Management Agreement entered into by and between petitioner and PLDT (Exh. "A"), petitioner was appointed trustee of the PLDT Beneficial Trust Fund, which is an employees' trust maintained by its employer, Philippine Long Distance Telephone Company, to provide retirement, pension, disability and death benefits to its employees. The Benefit Plan of the PLDT (Exh. "G") was approved and qualified as exempt from income tax by the respondent's Bureau on January 30, 1969 (Exh. "E").

From October 15, 1984 to December 31, 1991, petitioner invested the assets of PLDT Fund in savings and time deposits and deposit substitutes, the interest income of which were subjected to withholding taxes.

On December 2, 1991 and May 20, 1992, relying on the strength of this Court's ruling in CTA Case No. 3888 dated December 15, 1986 entitled "GCL Retirement Plan vs. Commissioner of Internal Revenue," which was affirmed by the Court of Appeals in CA-G.R. SP. No. 20426, dated August 27, 1990, and later on by the Supreme Court in the case of the Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals and GCL Retirement Plan (207 SCRA 487), holding that employees' trusts as well as the income of the pension trust are tax-exempt, petitioner filed with herein respondent requests for the refund of the taxes withheld from the interest earnings of the PLDT Fund (Exhs. "E" and "F").

As no action was taken by respondent on petitioner's claim for refund, the instant petition was filed on May 29, 1992.

In her Answer, respondent adduced the following Special and Affirmative defenses, thus:

> 1. Petitioner has failed to state any cause of action under Section 204 of the Tax Code, under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received.
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> In the instant case, petitioner begs the issue, as it has miserably failed to show on the face of the petition that the collection of the aforesaid tax liability in the amount of P6,805,305.37 is illegal and erroneous as against the legal presumption that the collection thereof is lawful and regular.
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> 2. In addition, well-settled is the doctrine that provisions on the tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.
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> 3. Besides, in an action for refund the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund.
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> 4. Moreover, and in this case, the claim for refund is still under investigation.

The question as to whether or not interest income derived by an employees' trust from its investments is exempt from income tax is settled in view of respondent's concession in its Memorandum filed on September 20, 1996, that indeed, retirement funds are exempt from the final withholding tax on interest income from money placements.

Thus, the sole issue left for determination by this Court is whether or not petitioner is entitled to the refund being sought for the period beginning October 15, 1984 to December 31, 1991 on the basis of the evidence presented.

It is significant to note that one of the requisites for a valid claim for refund is that it must be filed within two years from date of payment of the tax. Under Section 230 of the Tax Code:

> SEC. 230. *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> 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: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

It is clear from the aforecited law that the counting of the two-year prescriptive period commences to run from the date of payment of the tax and the payment of the final taxes on interest is considered to be made on the 25th day of the following month after the close of each calendar quarter pursuant to Section 51 (a) of the Tax Code, thus:

> Sec. 51. *Returns and payment of taxes withheld at source.*-(a) *Quarterly returns and payment of taxes withheld. - Taxes* deducted and withheld under Section 50 shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. <u>The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter</u>; while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made. (Underscoring supplied)

Verily, the taxes withheld from October 15, 1984 to March 31, 1990 are barred by prescription, the judicial claim for refund having been filed on May 29, 1992.

We now dwell on the sufficiency of petitioner's evidence as to the rest of its claims. To support its claim, petitioner adduced in evidence the following:

a. Quarterly returns of final income taxes withheld;

b. Confirmation receipts and payment orders to show payment of taxes withheld on interest;

c. Financial reports to show the financial condition of subject trust account;

d. Statements of account of petitioner from Central Bank and Authority to debit demand deposit account to show actual payment to the government of withholding tax through the debit of petitioner's account;

e. Statements of Special Savings Account to show the interest earnings of the subject trust account on which basis the withholding tax was computed and paid; and

f. Debit tickets to show that interest income was paid by petitioner to various accounts including subject trust account.

Subsequently, petitioner submitted as additional evidence the Income Statements of Trust Account No. 75-044-1 in order to establish the amount of income earned by the PLDT Beneficial Trust Fund.

A cursory evaluation of the evidence submitted by petitioner would reveal that petitioner failed to fully establish the identity and participation of the assets of PLDT Fund to the investments made by herein petitioner for the years 1990 and 1991. It is to be noted that except for the Statements of Special Savings Account and the Income Statements of Trust Account No. 75-044-1, there was no mention of Trust Account No. 75-044-1, purportedly the trust account number of PLDT Beneficial

Trust Fund. The Court, however, cannot rely solely on the 1990 and 1991 Income Statements submitted by petitioner for the purpose of establishing the amount of income earned by the PLDT Beneficial Trust Fund for the said years. The 1990 Income Statement was unsigned, unaudited and not testified to by any of the alleged signatories. The 1991 Income Statement, on the other hand, was likewise unaudited and while signed by a certain Ramon L. Bautista, Assistant Vice-President of the Trust Investments Division, was also not testified to by the said person.

At most, we can only rely on the Statements of Special Savings Account which showed the list of petitioner's clients including PLDT and reflected the following amounts of taxes withheld from said account:

Special Savings Account

Date	Tax Withheld		Exhs.
Nov. 1990	P 119,892.50		DDDDD
	55,466.66	175,359.16	EEEEE
Total for 1990		P175,359.16	

Special Savings Placements

Date	Tax Withheld	Exhs.
01-25-91	P 56,333.33	LLLLL-3
	72,333.33	LLLLL-4
	23,508.33	LLLLL-4

the fact that petitioner failed to fully establish the participation of the PLDT Fund in its investment activities, We are left with no recourse but to grant only such amount as has been duly proven. Considering, however, that from the Income Statements submitted by petitioner as well as from its Memorandum filed on June 27, 1997, petitioner is asking only for the lesser amount of P2,727,841.44 for the year 1991, We are constrained only to grant said amount.

WHEREFORE, in view of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to petitioner the amount of P2,903,200.60, computed as follows:

Tax withheld for	1990	P 175,359.16
	1991	2,727,841.44
Total		P2,903,200.60

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 this 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
Court of Tax Appeals