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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION, as Trustee of various Retirement Funds,
Petitioner,

- versus -

C.T.A. CASE NO. 4218

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : JUN 05 1996

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DECISION

Before Us for consideration is a judicial claim for the refund of final taxes allegedly erroneously and/or illegally withheld and collected from the income derived by the above-captioned various retirement funds (funds for brevity) from their respective bank deposits and investments in money market placements, deposit substitutes and securities during the calendar years 1985 and 1986 in the amount of P10,181,666.90 and P14,994,498.80, respectively.

Petitioner is a commercial banking corporation duly organized and existing under and by virtue of Philippine laws. It is authorized to perform trust functions and activities.

The facts are as hereunder stated.

In 1985 and 1986, petitioner, acting as a trustee and investment manager, deposited, invested and reinvested the assets of the funds in savings and time deposits, money market placements, and in securities such as treasury bills with various banking and financial institutions. From the income earned by the funds, the said institutions withheld a final tax of 15% pursuant to the provisions of Section 21 (d), now Section 21 (c), in relation to Section 53 (d) (1), now Section 51 (a) of the Tax Code. (Petition, p. 4; p. 21, CTA records)

On December 16, 1986, a supervening event made petitioner realize that the income earned by the funds was exempt from taxation. This was brought about by the promulgation by herein Court of its decision in the case of **GCL Retirement Fund vs. The Commissioner of Internal Revenue, CTA Case No. 3888** wherein the Court confirmed the exemption of qualified retirement plans under Republic Act No. 4917 from income tax, more particularly the income or yield derived by the GCL Retirement Plan from money placements and purchase of treasury bills (Petition, p. 9; p. 26, CTA records and letter claim to the BIR, p. 5; p. 36, CTA records)

Consequently, petitioner filed two separate written claims for refund with the Commissioner of Internal Revenue, one on December 29, 1987 for the year 1985 and the other on January 12, 1988 for the year 1986. Taken together, the claims amounted to P25,176,164.00, which when broken down consists of the already aforementioned P10,181,666.90 and P14,994,498.80 taxes so withheld for the years 1985 and 1986, respectively.

Alleging that the two-year prescriptive period to commence judicial proceedings for the recovery of the tax deemed erroneously and/or illegally collected was about to expire and that the claims for refund were still unacted upon by the Commissioner, petitioner elevated its case right before this Court.

Hénce, this appeal.

In its amended petition filed on January 14, 1988. Petitioner maintained the same arguments advanced before the Commissioner, and further alleged that the different banking and financial institutions, which inexplicably includes itself, continued to withhold taxes on the income of the funds from investments.

In answer, responded contended, **inter alia**, that:

> a) Any amount claimed to have been withheld must be shown to have been paid to the government, and in the case at bar, no showing has been made; and

b) Contrary to petitioner's perception and belief, the exemption of employees trust funds from withholding tax on interest from bank deposits and yield from deposit substitutes arose from Section 21 (d) and 24 (c) of the Tax Code, before amendment by Presidential Decree No. 1959 and not from Republic Act No. 4917 and Section 56 (b) of the Tax Code.

Later development would reveal that the legal issues posed by the parties have been eventually resolved by the Honorable Supreme Court in **Commissioner of Internal Revenue vs. GCL Retirement Plan** (G.R. No. 05022, March 23, 1992; 207 SCRA 487). It must be noted that the latter case affirmed the decision of this Court over the same which was docketed **a quo** as CTA Case No. 3888, **supra.** In upholding our decision, the Honorable Supreme Court stated, in part, thusly:

"In so far as employees' trusts are concerned, the foregoing provisions should be taken in relation to then Section 56 (b) [now 53 (b)] of the Tax Code, as amended by Rep. Act No. 1983, **supra,** which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and is repeated hereunder for emphasis:

"**Section 56.** *Imposition of Tax.*— (a) *Application of Tax.*— The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.

"(b) *Exception.*— The tax imposed by this Title shall not apply to employees' trust which forms part of a pension, stock bonus or profit sharing plan of an employer for the benefit of some or all of his employees x x x."

The tax-exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trusts for tax exemption.

And rightly so, by virtue of the **raison de'etre** behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in Rep. Act No. 1983, Section 56 (b), was conceived in order to encourage the formation and establishment of such private Plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder **together with the income of the pension trust** are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, ets. benefits for **employees outside** the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in **Commissioner of Internal Revenue vs. Visayan Electric Co., et al.,** G.R. No. L-22611, 27 May 1968, 23 SCRA 715); italics supplied.

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

The only remaining issue to be resolved thus is the entitlement of petitioner to its claim based on the evidences presented.

We resolve to deny this petition.

As borne by the records, petitioner adduced in evidence the following exhibits, to wit:

1.) The various trust agreements, the retirement plans, and BIR letters of approval of the retirement plans as complying with the requirements of R.A. No. 4917 (Exhibits "A" to "Z" and "AA" to "MM", all inclusive of sub-markings);

2.) Non-Negotiable Promissory Notes and the corresponding Fixed Income Securities Placements (Exhibits "NN" to "44 U-1");

3.) List of investments in interest bearing loans made by petitioner's Trust and Investment Department in behalf of the various Funds for the years 1985 and 1986 (Exhibits "45-B" to "45-B-24);

4.) Summary of the Promissory Notes (Exhibits "45-C" to "45-C-32");

5.) Quarterly Returns of Taxes Withheld on Interest Paid by Banks and Quasi-Banks prepared and filed by Petitioner's Trust and Investment Department (Exhibits "45-D" to "45-M", all inclusive of sub-markings); and lastly,

6.) The testimony of witness, Mrs. Remedios Abello on the foregoing exhibits.

A cursory evaluation of the aforequoted exhibits would readily show us that petitioner failed to establish the identity and participation of the assets of each of the funds involved herein to the specific investments made by its Trust and Investment Department for the years 1985 and 1986.

Nowhere among the submitted exhibits and the contents of the transcript of stenographic notes of the hearings conducted in the case at bar could we find any mention of the particular trust or savings account number of each of the funds as having been engaged in an investment activity of herein trustee for and in their behalf.

At the very least, the trust account numbers listed in the various Fixed-Income Securities Placements (FISP), **supra,** could have taken care of the situation if indeed they truly represent the funds, but petitioner simply did not bother to identify and introduced in evidence the trust or savings account number of each the Funds and from there exerted vigilant effort to correlate them to those listed in the FISP in order to prove their indubitable participation therein.

Moreover, the Quarterly Returns of Taxes Withheld submitted by petitioner as proof of withholding and remittance of the taxes to the BIR do not establish with certainty the fact of actual remittance of all the taxes so withheld from the income of the funds. We have observed that the total of the withholding taxes remitted to the BIR per returns amounted to P35,805,067.62 as compared to the amount of the claim which is P25,176,164.00. We have also noted that the returns were all filed in behalf of Citytrust Banking Corporation, as a withholding agent. On this point, we would like to refer to one of the ultimate facts alleged by the petitioner in its amended petition for review which we quote, in part, thus:

> "4. In 1985 and 1986, petitioner, in the exercise of its powers as trustee and investment manager, deposited, invested and reinvested the assets of the Funds in savings and time deposits, money market placements, and in securities (including government securities, such as Treasury Bills) with various banking and financial institutions, including Citibank N.A., CityTrust Banking Corporation and Multinational Bancorporation, from which the Funds earned income. The said banking and financial institutions, however, erroneously and/or illegally withheld the final tax of 15% provided under the former Section 21(d), now Section 21(c), in relation to the former Section 53(d), now Section 51(a), of the NIRC, from the income or yield derived by the Funds on various dates during calendar years 1985 and 1986, as follows:
>
> xxx xxx xxx
>
> The amount of taxes stated above were withheld by different banking and financial institutions

<u>from 1 January 1985 up to 31 December 1986, particularly on the dates indicated on the schedule hereto attached as Annex "A" to form an integral part hereof."</u>

Based on the above allegation, it is clear that the amount of the taxes withheld and being claimed by petitioner for refund was withheld by different banking and financial institutions for the years 1985 and 1986. While petitioner is included as one of the institutions just stated. We can not understand why it is only presenting its own returns of taxes withheld for the entire amount of the claim when it admits of the fact that other banking financial institutions also withheld taxes on the alleged transactions entered into by the funds. Such other institutions were obviously the ones who remitted the final taxes they withheld from their own dealing with the funds.

Petitioner, as trustee, should have endeavored to prove the actual remittance of the taxes so withheld from the income derived by the funds from their respective transactions with the other institutions.

In addition, the submitted quarterly returns do not demonstrate the fact that any of the taxes alleged to have been withheld really forms part of the larger amount actually remitted to the BIR by herein petitioner, in the absence of a detailed and complete schedule of all the kinds of final taxes withheld by it where the particular kind and amount of tax involved herein can be verified and segregated as part of the whole remittance.

The preceding circumstance is even made worse by the lack of any evidence on the income allegedly earned by the funds from the other institutions. Consequently, We can never determine the specific amount of taxes withheld by such institutions.

Without evidence on the amount of taxes that were withheld by the other institutions, plus the fact that petitioner failed to establish the participation of the funds in its own investment activities as above discussed, We are thus left with no recourse but to reject the instant claim.

"It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and is construed in ***strictissimi juris*** against the taxpayer and in favor of the taxing authority." (**CIR vs Rio Tuba Nickel Mining Corp., 207 SCRA 549**).

Prescinding from the above, we have likewise observed that petitioner failed to submit evidence on its claim for the year 1986, except for the quarterly returns and a very few promissory notes covering the month of January. Also, the claim for the first three quarters of

1985 has already prescribed, because the payment of the tax for the third quarter of 1985 was made on the 25th day of October following the close of said quarter as required by Section 54 of the Tax Code (1984, ed.) and which when reckoned from the date of filing of herein petition on December 29, 1987 is clearly shown to be way beyond the two-year prescriptive period for the filing of a judicial claim as provided in Section 292 of the same Code.

WHEREFORE, in view of insufficiency of evidence, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On Leave)
MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify 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
Presiding Judge
Court of Tax Appeals