REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

## ***SECOND DIVISION***

PHILIPPINE NATIONAL BANK,
*Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

**C.T.A. CASE NO. 6264**

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

**Promulgated:**

AUG 1 1 2005 [signature]

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

*Legal Principle Involved*

A taxpayer's excess withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose. This right to refund or credit, however, is not automatic, the taxpayer must be able to prove the same by substantial

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evidence, in compliance with the basic requirements set forth in our Tax Code.

## THE CASE

Before Us is this Petition For Review filed by PHILIPPINE NATIONAL BANK (hereafter "petitioner") seeking the issuance of a Tax Credit Certificate in the amount of P6,028,594.00 representing the creditable taxes withheld from its income from sale of real property, rental income, commissions, and management fee pertaining to taxable year 1998.

## THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

> "1. Petitioner is a private commercial bank organized and existing under and by virtue of Philippine Laws with principal office at the PNB Financial Center, Roxas Boulevard, Pasay City;
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> 2. Respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of excess or overpaid taxes, who holds office at 4/F, BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes;

3. On April 15, 1999, PNB filed its Tentative Return for 1998 (copy attached to the Petition), enclosing amoung others the documents attached to the "List of Attachments To Annual Income Tax Return Calendar Year Ended December 31, 1998" (Annex "A" hereof, consisting of twenty-seven (27) pages excluding copies of certificates of withholding taxes which are already attached to the petition);

4. On September 30, 1999, PNB filed an Amended Income Tax Return for 1998 (copy attached as Annex "C" to the Petition), enclosing therewith the documents stated in the "List Of Attachments To The Amended Annual Income Tax Return For The Year Ended December 31, 1998" (Annex "B" hereof)

5. Copies of certificates of creditable withholding taxes for the calendar year ended December 31, 1998 (attached to the Petition), and the Schedule of Creditable Withholding Taxes for 1998 (Annex "C" hereof also attached to the Petition), were among the documents appended to PNB's Amended Return for 1998 and filed with the Bureau of Internal Revenue, as shown in the aforesaid list of attachments to amended return (Annex "B" hereof);

6. PNB likewise filed its Corporate Quaterly Returns (copies attached Petition) for the calendar year 1998;

7. On February 8, 2001, under letter dated Febraury 5, 2001 (copy attached to the petition), PNB filed with the Commissioner of Internal Revenue a claim for refund of the amount of P 6,028,594.00 representing PNB's excess payment of income taxes for the calendar year 1998;

8. On June 22, 2001, PNB filed its Amended Income Tax Return for 1999, copy of which is attached as Annex "D" hereof;

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676

The administrative claim for refund filed with the BIR not having been acted upon, the petitioner filed the present Petition For Review.

The Commissioner of Internal Revenue (hereafter "respondent"), in his Answer, alleged by way of Special and Affirmative defenses:

> "3. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau.
>
> 4. Petitioner failed miserably to show that the total amount of Php: 6,028,594.00 claimed as creditable taxes withheld was erroneously or illegally collected, or that the same was properly documented.
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> 5. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.
>
> 6. In an action for refund/credit, taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.
>
> 7. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code.
>
> 8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

Petitioner presented Mr. Ruben Rubio of Sycip Gorres and Velayo (SGV) Company, who spearheaded the Special Audit which was conducted to verify its claim for refund of the excess payment of its

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677

income taxes for 1998 in the amount of P6,028,594.00, pursuant to CTA Circular 1-95, as amended. Likewise, petitioner submitted its Formal Offer of Evidence, which was admitted by this Court subject to a final resolution as regards their probative value.

On the other hand, respondent submitted the case for decision after presenting its lone witness, Ms. Emelita Catuday.

On February 24, 2005 both parties were ordered to file their respective memoranda within thirty (30) days from notice, afterwhich the case shall be submitted for decision.

On June 23, 2005, considering that only the petitioner filed its memorandum within the period prescribed by this Court, the case was deemed submitted for decision.

## ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

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WHETHER OR NOT THE INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD FROM PNB IN 1998, WERE INCLUDED IN PNB'S GROSS INCOME FOR 1998

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II

WHETHER OR NOT PNB OVER-PAID ITS INCOME TAX FOR 1998 IN THE AMOUNT OF P6,028,594.00

III

WHETHER OR NOT PNB IS ENTITLED TO A TAX REFUND OR TAX CREDIT CERTIFICATE FOR THE SAME AMOUNT FROM THE BUREAU OF INTERNAL REVENUE

The above stipulated issues are somehow interrelated, to simplify, viz: Whether or not petitioner is entitled to a refund or tax credit in the amount of P6,028,594.00 representing the creditable taxes withheld from its income from sale of real property, rental income, commissions, and management fee pertaining to taxable year 1998.

**THE COURT'S RULING**

The petition is partly meritorious.

*Creditable Withholding Tax*

Before discussing the issue on hand, We need to grasp the fundamental concept of the nature of the creditable withholding tax.

Under this system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return,

679

to report and/or pay the difference between the tax withheld and the tax due [*Revenue Regulations NO. 02-98 Section 2.57. (B)*]. Taxes withheld are in the nature of payment by a taxpayer in order to extinguish his possible tax obligation. They are installments on the annual tax which may be due at the end of the taxable year. The withheld amounts are remitted to the BIR and are considered creditable withholding taxes, creditable against income tax liability for that year. Withholding taxes are "deposits" which are subject to adjustments at the proper time when the complete tax liability is determined (*Gibbs vs. Commissioner of Internal Revenue 15 SCRA 318; Commissioner of Internal Revenue vs. TMX Sales, Inc 205 SCRA 184*).

The incomes, in the instant case, received by a taxpayer are unquestionably subject to the creditable withholding tax. Such incomes, without any deduction of the withholding tax, form part of the taxpayer's taxable gross receipts. The amount of the creditable withholding tax is indubitably part of the taxpayer's income. The creditable withholding taxes are merely advance payment by the taxpayer of its tax on said income. The amount of the withholding tax comes from the taxpayer's income and its payment extinguishes its tax liability. Thus, the amount deducted by the withholding agent and remitted to the government, representing the

680

creditable withholding tax, is the money the taxpayer owns that is used to pay the tax liability.

In this case, the payments of the withholding taxes for 1998 was creditable to the income tax liability, if any, of petitioner, determined after the filing of the corporate income tax returns in 1999. As petitioner posted net losses, it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the aforesaid revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year (*Citibank, N.A. vs. Court of Appeals, 280 SCRA 471*).

Pursuant to said system of taxation, petitioner included in its 1998 income statement the following: (a) gains or losses from the sale of real property; (b) rental income; and (c) commission and management fees, which were already taxed at source or withheld by the withholding agent or payor of the income. Procedurally, the foregoing revenues, despite having been taxed or withheld beforehand, will still be included in the computation of the gross income to arrive at the net taxable income. The income tax arrived at will now be reduced by the tax previously withheld. Thus, petitioner will only pay the difference between the tax withheld and the tax due after arriving at the income tax liability. Nevertheless, as in the instant case, the tax withheld was more than the tax due, thus, petitioner will then be entitled to a tax credit or refund. In gist, petitioner had an aggregate excess creditable withholding tax of P6,028,594.00, which it is now seeking its refund.

The right to refund is clearly provided by *Section 58(D)* of the *National Internal Revenue Code (NIRC) of 1997, as amended*, to wit:

> "Sec. 58(D) Income of Recipient. – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> xxx xxx xxx."

However, this does not mean that the petitioner is automatically entitled to its claim for refund. It must be established by sufficient evidence. But, before determining whether petitioner has complied with the requirements, it bears stressing that during the course of the trial respondent has already partially approved the tax refund of herein petitioner. On May 19, 2003, the Bureau of Internal Revenue (hereafter

"BIR") issued in favor of PNB a Tax Credit Certificate No. SN 023837 (*CTA Records, page 581),* in the total amount of P4,154,353.42 out of its total claim of P6,028,594.00, thereby leaving a refundable balance of P1,874,240.58.

As per verification (*Exhibit "2-A"*) made by the Regional Accounting Division of the BIR the following remittances were not included in the certification amounting to P1,874,240.58, hence, the disallowance of the same, to wit:

| Withholding Agent | Transaction | Date | Withholding Tax |
|---|---|---|---|
| Beneficial-PNB Life | Rental | | 4,185.00 |
| Zacel Quimsing | Sale of Property | 5-11-98 | 21,450.00 |
| Gerardo N. Torres | Sale of Property | 3-30-98 | 3,480.00 |
| Eleuterio Laxamana | Sale of Property | 1-26-98 | 1,275.00 |
| PNB Forex, Inc. | Commission | | 290,980.11 |
| Ricardo So | Sale of Property | 7-29-98 | 188,518.50 |
| Rene J. Jubilo | Sale of Property | 4-1-98 | 22,800.00 |
| Jun R. Florencio | Sale of Property | 7-24-98 | 19,500.00 |
| Benito S. Que | Sale of Property | 3-23-98 | 197,032.50 |
| Sps. Jose Mari & El Aldecoa | Sale of Property | 9-22-98 | 6,088.50 |
| Sps. Jose Mari & El Aldecoa | Sale of Property | 9-22-98 | 5,487.75 |
| Maxima Mañego | Sale of Property | 9-28-98 | 20,850 |
| Christine L. Morales | Sale of Property | 5-1-98 | 5,312.58 |
| Ada Tañola | Sale of Property | 8-13-98 | 22,125.00 |
| PNB Forex, Inc | Rental & Mgnt. Fee | | 976,676.49 |
| Grace Fernandez | Sale of Property | 12-18-98 | 4,742.40 |
| Rodrigo Olis | Sale of Property | 8-10-98 | 20,047.50 |
| Felimon Tiu | Sale of Property | 9-10-98 | 22,522.50 |
| Beneficial-PNB Life | Rental | | 6,486.75 |
| Japan-PNB Leasing | Rental | | 34,680.00 |
| Total | | | 1,874,240.58 |

683

Thus, only the foregoing transactions/ creditable withholding taxes will be settled, as the rest of the creditable withholding taxes amounting to P4,154,353.42 were already remitted, hence, moot and academic.

In the case on hand, respondent examined petitioner's income tax returns and presumably found no false declaration in them, as he did not allege any such false declaration before this Court. Respondent's refusal was based on the argument that not the entire withholding taxes, sought to be refunded, were remitted to the BIR. Thus, the legal issue of whether or not the remittance of the withholding taxes to the BIR is a condition precedent to the tax refund of petitioner will be addressed.

We answer in the negative. Nothing in the Tax Code would suggest that the actual remittance of the withholding tax is required. Furthermore, respondent failed to present the certification to prove such contention, thus, this Court cannot give the same credibility.

Affirmed by jurisprudence, supported by the Tax Code and implemented by regulations, the following are the three basic requisites before the refund of excess creditable withholding taxes shall be given due course, thus: (1) the claim for refund/tax credit was filed within the two-year prescriptive period provided under *Section 204 (3) [now Section 204*

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*(c)]* in relation to *Section 230 [now Section 229]* of the Tax Code, as amended, (2) the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom (*Revenue Regulation 2-98, SECTION 2.58.3[B]*); (3) it is shown on the return that the income payment received has been declared as part of the gross income (*Citibank, N.A. vs. Court of Appeals, supra; ACCRA Investments Corporation vs Court of Appeals, 204 SCRA 957)*. Thus, it is imperative that petitioner should be able to prove the foregoing prerequisites.

*Claim For Refund Was Filed*
*Within The Prescriptive Period*

Records show that both the administrative and judicial claims for the issuance of tax credit certificate, filed on February 5, 2001 (*Exhibit "A"*) and March 30, 2001 (*page 1, CTA records*), respectively, were filed well within the two-year prescriptive period reckoned from the date the original 1998 Annual Income Tax Return of petitioner was filed on April 15, 1999 (*Annex "B"*). The first requirement was found to have been complied with by the petitioner, hence, We go to the other requirements at hand.

68

*Were The Taxes Withheld Properly Supported by Certificates of Withholding Tax?*

With regard to this requirement, petitioner has proven the fact of withholding on its income from sale of property, rental income and management fees by presenting the corresponding certificates of withholding tax (*Exhibits "J" to "NNNNN"*). Having concluded that petitioner has acted in accordance to the foregoing conditions, We will now go to the last requisite.

*Were The Income Allegedly Withheld Made Part of Petitioner's Gross Income?*

Finally, with regard to the third requirement, petitioner was able to establish that the incomes corresponding to the creditable withholding taxes were declared as part of its gross income in its 1998 Annual Income Tax Return. Except for the following transactions enumerated under, the same will be under further scrutiny, viz:

| Withholding Agent | Withholding Tax | Grounds |
|---|---|---|
| Beneficial-PNB Life | 4,185.00 | Not supported |
| Eleuterio Laxamana | 1,275.00 | Reported as 1997 income |
| Ricardo So | 188,518.50 | Not recorded |
| Jun R. Florencio | 19,500.00 | Reported as 1997 income |
| Benito S. Que | 197,032.50 | Not recorded |
| Rodrigo Olis | 20,047.50 | Not recorded |
| Beneficial-PNB Life | 115.09 | Reported as 1999 income |
| Japan-PNB Leasing | 14,905.33 | Reported as 1999 income |
| Total | 445,578.92 | |

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After a careful examination of the records, this Court finds the foregoing to be contentious since they are either not recorded in the 1998 income statement, or unsupported by pertinent documents.

The conclusion of this Court finds support in the report of the duly commissioned independent Certified Public Accountant (*Exhibit "XXXXX"*). In verifying said transactions, the report reveals that the above transactions had already been reported in petitioner's 1997 or 1999 (*Exhibit "QQQQQ-11"*) income tax return, not recorded (*Exhibit "QQQQQ-12"*) or unsupported by pertinent documents (*Exhibit "QQQQQ-14"*). Hence, petitioner's incomes from these transactions were not included anymore in petitioner's gross sales for the fiscal year 1998. For the 1997 transactions, although, the independent CPA report contains a statement that the corresponding transactions were declared in petitioner's respective Income Tax Return, nevertheless, the same cannot be given much weight since the petitioner did not present any document or record relating thereto, for the Court's own evaluation and appreciation as petitioner's evidence. For the same reason given the unsupported and unrecorded transactions cannot also be appreciated. Lastly, the transactions recorded in 1999, though there is an income tax return (ITR) for 1999 on record, the same cannot be given

687

much weight, since an ITR does not reflect a schedule of sales which proves that the transactions are included or made part of the gross income.

In view thereof, the creditable withholding taxes amounting to P445,578.92 withheld from petitioner shall be deducted from its remaining claim of P1,874,240.58.

**WHEREFORE,** premises considered, the present Petition For Review is hereby partially **GRANTED**. Respondent is hereby ORDERED to REFUND or ISSUE a Tax Credit Certificate in favor of herein petitioner in the amount of **P1,428,661.66**, representing the latter's unutilized creditable withholding tax for the year 1998.

**SO ORDERED.**

Olga Palanca-Enriquez

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

Juanito C. Castañeda, Jr.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

618

# CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairman, Second Division

689