REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6699, 6884 and 7166

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

AUG 28 2008, 2:30pm

x - x

DECISION

CASANOVA, J.:

Nature of the Case

In this consolidated Petitions for Review, petitioner seeks for the refund of excess final withholding taxes in the amount of P15,672,958.72 it allegedly paid for the years 2001 to 2003 with respect to interest income derived by (1) Industrial Bank of Japan, Limited, (2) Fortis Bank (Nederland) N.V., (3) Raiffesen Zentral Bank Osterreich AG, (4) Fortis Bank S.A./N.V., and (5) Mizuho Corporate Bank, Limited (collectively referred to as the "Banks") under and pursuant to Part B (PRI Facility Credit Agreement) of Omnibus Credit and Security Agreement[1] (herein referred to as the "Agreement") between petitioner and the Banks.

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[1] Dated August 18, 2000

Statement of the Facts

Petitioner, CBK Power Company Limited, is a limited partnership duly organized and existing under the laws of the Republic of the Philippines, engaged in the development and operation of the Caliraya, Botocan and Kalayaan hydroelectric power generating plants in Laguna (herein referred to as the "CBK Project"). Its principal office address is located at the NPC Compound, San Juan, Kalayaan, Laguna, 4015.[2] Petitioner is, likewise, a duly registered taxpayer[3] and is registered with the Board of Investments as engaged in a preferred pioneer area of investment under the Omnibus Investment Code of 1987.[4]

Respondent, Commissioner of Internal Revenue, is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes. Respondent is vested with power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum excessively or in any manner wrongfully collected, including excess final withholding taxes.[5]

Petitioner, in August 2000, obtained a syndicated loan from, *inter alia*, BNP Paribas, The Dai-ichi Kangyo Bank, Limited, the Industrial Bank of Japan, Limited and Societe General (collectively referred to as the "Lenders") to finance the CBK Project.

Under the procedures of the Agreement, the interest payments are to be remitted to an Inter-creditor Agent (or PRI Facility Agent) acting for the Lenders. The Inter-creditor Agent will inform petitioner of the total interest payments already due for a certain period under the Agreement and will instruct petitioner to make payments to a designated account identifying, through an attachment in tabulated form, the interest amount payable to each

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[2] Paragraph 1, Page 2, Petition for Review; Page 2, CTA Records
[3] Paragraph 2, Page 1, Joint Stipulation of Facts and Issues (JSFI) for Trial No. 1 dated August 31, 2004; Page 362, CTA Records, CTA Case No. 6699
[4] Paragraph 3, Page 2, JSFI for Trial No. 1; Page 363, CTA Records, CTA Case No. 6699
[5] Paragraph 2, Page 2, Petition for Review; Page 2, CTA Records

of the Lenders.[6] Pursuant to Section 2.1.5 of the Agreement, petitioner will then instruct its bank to remit the total interest payment due during a specified period to the Inter-creditor Agent in accordance with its payment instructions.[7] Upon receipt of petitioner's interest payment, the Inter-creditor Agent will distribute the amounts due to each Lender, and each of the Lenders will receive the interest payment appertaining to it.[8]

Following the completion of petitioner's primary loan syndication and prior to drawdown or the actual borrowing of funds, certain portions of the loan were assigned by the Lenders to various other banks, including Fortis Bank (Nederland) N.V. and Raiffesen Zentral Bank Osterreich AG.[9]

In February 2001, pursuant to the Agreement, petitioner drew on the Credit Facility, or actually borrowed or was lent money by the Banks.[10]

The Inter-creditor Agent is Dai-ichi Kangyo Bank, a Japanese bank, which subsequently merged with the Industrial Bank of Japan, Limited and the Fuji Bank, Limited, with the merged entity being named as Mizuho Corporate Bank.[11] One of the merged banks, Fuji Bank, Limited, had a Philippine branch, and with the merger, this branch became a branch of Mizuho Corporate Bank.[12]

Prior to the merger, petitioner remitted a portion of interest payments to the Inter-creditor Agent for the account of the Industrial Bank of Japan, Limited.

Subsequently, Fortis Bank (Nederland) N.V. assigned its portion of the loan to Fortis Bank S.A./N.V., as a Lender under the Agreement.[13] Thus, Fortis Bank (Nederland) N.V. was the payee of the interest income in May and August 2001, while Fortis Bank S.A./N.V. assumed the former's rights and interest effective October 1, 2001.

[6] Exhibits MMM to EEEE, MMMM, NNNN, T[4] and Y[4]
[7] Exhibits L, RR, XX, YY to LLL, R[4] and S[4]
[8] Exhibits KK, LL, MM U[5] and V[5]
[9] Exhibits L, M to M-6, and W[5]
[10] Exhibits MMM to EEEE, NNNN, T[4] and Y[4]
[11] Exhibits Q[5] and M[5]
[12] Exhibit Q[5]
[13] Exhibits R to R-13, S to S-3 and W[5]

Fortis Bank S.A./N.V., Fortis Bank (Nederland) N.V., and Raiffesen Zentral Bank Osterreich AG are residents of Belgium, Netherlands and Austria, respectively, for purposes of their respective income taxes, and of the relevant provisions of the income tax treaties between the Philippines and Belgium, Netherlands and Austria, respectively.[14] While, the Industrial Bank of Japan, Limited and Mizuho Corporate Bank, Limited are residents of Japan for purposes of their respective income taxes; and of the relevant provisions of the income tax treaties between the Philippines and Japan.[15] Except for Mizuho Corporate Bank, Limited, the Banks do not have offices in, and are not engaged in trade or business in the Philippines.[16]

For the period from May 2001 to May 2003, pursuant to the Agreement, petitioner remitted interest payments to the Banks. It then allegedly withheld, paid and remitted to Revenue District Office No. 55 of the BIR the final withholding taxes on interest to the said Banks[17] based on the following rates:

a) Fifteen percent (15%) for Fortis Bank S.A./N.V., Fortis Bank (Nederland) N.V., and Raiffesen Zentral Bank Osterreich AG; and
b) Twenty percent (20%) for Industrial Bank of Japan, Limited and Mizuho Corporate Bank, Limited.[18]

According to petitioner, under the relevant tax treaties between the Philippines and the country in which each of the Banks is a resident, the interest income derived by the Banks are subject to a preferential tax rates as follows:

Bank	**Country of Residence**	**Preferential Rate under Relevant Tax Treaty**
Fortis Bank S.A./N.V.	Belgium	10% (Article 11[1], RP-Belgium Tax Treaty)
Industrial Bank of Japan	Japan	10% (Article 11[3], RP-Japan Tax Treaty)
Raiffesen Zentral Bank Osterreich AG	Austria	10% (Article 11[3], RP-Austria Tax Treaty)
Mizuho Corporate Bank	Japan	10% (Article 11[3], RP-Japan Tax Treaty)

14 Exhibits NN, OO, PP and P5
15 Exhibits K5, L5, Q5, M5 and S5
16 Exhibits C, D, E and O5
17 Pages 4-5, Petition for Review; Pages 4-5, CTA Records, CTA Case No. 6699; Pages 4-5, Petition for Review; Pages 4-5, CTA Records, CTA Case No. 6884; and Pages 3-4, Petition for Review; Pages 3-4, CTA Records, CTA Case No. 7166
18 Exhibits T-1, V-1, X-1, Z-1, BB-1, DD-1, FF-1, P4-1, Q4-1, and N5

Thus, on April 14, 2003, petitioner filed a claim for refund of its excess final withholding taxes erroneously withheld and collected for the years 2001 and 2002 with the BIR Revenue Region No. 9. [19] The claim for refund of excess final withholding taxes in 2003 was filed on March 4, 2005.[20]

Due to respondent's inaction, petitioner filed Petitions for Review relating to the interest payments made in 2001 to 2003 with this Court.

C.T.A. Case No. 6699

Petitioner filed its Petition for Review on June 6, 2006 for a refund of excess final withholding tax in the amount of P6,393,267.20 covering year 2001 with respect to interest income derived from (1) Fortis Bank S.A./N.V., (2) Industrial Bank of Japan, and (3) Raiffesen Zentral Bank Osterreich AG.

Respondent in his Answer[21] filed on July 25, 2003, by way of special and affirmative defenses averred among others:

> "5) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 6) The amount of P6,393,267.20 being claimed by petitioner as alleged excess final withholding taxes for the year 2001 was not properly documented;
>
> 7) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> a. Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit; and
>
> b. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp., vs. Commissioner of Internal Revenue, 124 SCRA 1211)."**

[19] Paragraph 5, Page 2, JSFI for Trial No. 1; Page 363, CTA Records, CTA Case No. 6699
[20] Paragraph 5, Page 1, JSFI for Trial No. 2; Page 280, CTA Records, CTA Case No. 7166
[21] Pages 2-3, Answer; Pages 220-221, CTA Records, CTA Case No. 6699

However, petitioner filed a Supplemental Petition on September 10, 2003.[22] Based therewith, BIR confirmed in DA-ITAD Ruling No. 099-33 dated July 16, 2003 that petitioner's interest payments to Industrial Bank of Japan and Raiffesen Zentral Bank Osterreich AG are subject to a final withholding tax of ten percent (10%).[23] Further in DA-ITAD Ruling No. 126-03 issued by the BIR dated August 18, 2003 confirmed that petitioner's interest payments to Fortis Bank S.A./N.V. are subject to a final withholding tax of ten percent (10%).[24]

Respondent in his Answer (Re: Supplemental Petition for Review)[25] maintained that the alleged rulings were issued subject to the conditions that the facts as represented in the requested rulings are still subject to investigation, and if upon investigation it shall be disclosed that the facts are different, then the ruling shall be without force and effect.

The parties submitted their Joint Stipulation of Facts and Issues for Trial on December 18, 2003.[26]

Nonetheless, petitioner filed a Motion for Leave to File and Admit Amended Petition on February 18, 2004.[27] It asserted that while Fortis Bank S.A./N.V. is the Lender of record of petitioner, the petition inadvertently failed to state that Fortis Bank N.V. (Nederland) was the payee of the interest income in May and August 2001.[28]

Respondent then filed on March 11, 2004 his Answer (To Amended Petition for Review).[29]

Petitioner then filed a Motion to Consolidate CTA Case Nos. 6699 and 6884, which was granted by the Court on June 18, 2004.[30]

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[22] Pages 228-231, CTA Records, CTA Case No. 6699
[23] Paragraph 3, Supplemental Petition; Paragraph 9, Pages 2-3, JSFI for Trial No. 1; Pages 363-364, CTA Records; CTA Case No. 6699
[24] Paragraph 4, Supplemental Petition; Paragraph 10, Page 3, JSFI for Trial No. 1; Page 364, CTA Records; CTA Case No. 6699
[25] Paragraph 3, Answer (Re: Supplemental Petition for Review); Page 255, CTA Records; CTA Case No. 6699
[26] Pages 268-272, CTA Records, CTA Case No. 6699
[27] Pages 288-302, CTA Records, CTA Case No. 6699
[28] Paragraph 4, Page 2, Motion for Leave to File and Admit Amended Petition; Page 289, CTA Records, CTA Case No. 6699
[29] Pages 305-307, CTA Records, CTA Case No. 6699
[30] Page 335, CTA Records, CTA Case No. 6699

On August 31, 2004, the parties entered their Joint Stipulation of Facts and Issues for Trial[31] (herein referred to as "Joint Stipulation of Facts and Issues for Trial No. 1")

In a Resolution dated August 3, 2005, this Court granted petitioner's Omnibus Motion. Thus, CTA Case Nos. 6699, 6884 and 7166 were thereby consolidated.[32]

The case was submitted for decision in a Resolution dated September 24, 2007, taking into consideration the Memorandum filed by petitioner on August 24, 2007, *sans* respondent's Memorandum.[33]

C.T.A. Case No. 6884

Petitioner filed its Petition for Review on March 5, 2004 for a refund of P8,136,174.31 covering year 2002 with respect to interest income derived by (1) Fortis Bank S.A./N.V., (2) Industrial Bank of Japan, Limited, (3) Mizuho Corporate Bank Limited, and (4) Raiffesen Zentral Bank Osterreich AG.

Respondent filed his Answer[34] on May 7, 2004, asserting among others:

> "5) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 6) The amount of P8,136,174.31 being claimed by petitioner as alleged excess final withholding taxes for the year 2002 was not properly documented;
>
> 7) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 8) Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit; and
>
> 9) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp., vs. Commissioner of Internal Revenue, 124 SCRA 1211)."**

[31] Pages 362-366, CTA Records, CTA Case No, 6699
[32] Pages 415-416, CTA Records, CTA Case No. 6699
[33] Page 641, CTA Records, CTA Case No. 6699
[34] Page 2, Answer; Page 256 CTA Records; CTA Case No. 6884

Petitioner then on May 19, 2004 filed a Motion to Consolidate CTA Case Nos. 6699 and 6884, which the Court granted on June 18, 2004.[35]

C.T.A. Case No. 7166

Petitioner filed its Petition for Review on March 9, 2005 for refund of P1,143,517.21 covering year 2003 with respect to interest income derived by (1) Fortis Bank S.A./N.V. and (2) Raiffersen Zentral Osterreich AG.

Respondent in his Answer[36] filed on May 9, 2005, which states:

> "5) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 6) The amount of P1,143,517.21 being claimed by petitioner as alleged excess final withholding taxes for the year 2003 was not properly documented;
>
> 7) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 8) Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 9) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp., vs. Commissioner of Internal Revenue, 124 SCRA 1211).**"

Petitioner filed an Urgent Omnibus Motion (I) for Consolidation and (II) to Cancel Pre-trial and Submission of a Pre-trial Brief on May 23, 2005.[37]

The parties then entered their Joint Stipulation of Facts and Issues for Trial[38] (herein referred to as "Joint Stipulation of Facts and Issues for Trial No. 2") on July 20, 2005, which the Court approved in a Resolution dated July 26, 2005.[39]

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[35] Page 335, CTA Records, CTA Case No. 6699
[36] Page 224-226, CTA Records, CTA Case No. 7166
[37] Pages 230-234, CTA Records, CTA Case No. 7166

This Court in a Resolution dated August 3, 2005, ordered the consolidation of CTA Case Nos. 6699, 6884 and 7166.[40]

The Issues

The issues to be resolved as stated in the parties' Joint Stipulation of Facts and Issues for Trial No. 1: [41]

1) whether or not CBK overpaid final withholding taxes in the years 2001 and 2002 and is therefore entitled to a refund of its excess final withholding tax payments;

2) whether or not the claim for refund was filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the National Internal Revenue Code, as amended (Tax Code);

3) whether or not Fortis Bank (Nederland) N.V., Fortis Bank S.A./N.V., the Industrial Bank of Japan and Raifessen Zentral Bank Osterreich AG do not have offices in, and are not engaged in trade or business in the Philippines;

4) whether or not CBK remits its interest payments directly to Mizuho Corporate Bank's Hong Kong branch and does not course such payments through Mizuho Corporate Bank's Manila branch;

5) whether or not Mizuho Corporate Bank's Manila branch has a participation in the Agreement and realizes income from the interest payments arising therefrom;

6) whether or not CBK paid interest to the aforementioned banks on May 2001, August 2001, November 2001, [and] February 2002, May 2002, August 2002 and November 2002;

7) whether or not CBK remitted and withheld final withholding taxes (on interest payments to the aforementioned banks) to the BIR on the above mentioned interest payments on June 11, 2001, September 10, 2001, December 10, 2001, March 11, 2002, June 10, 2002, September 10, 2002 and December 10, 2002 at the following rates:

    a) 15% for Fortis Bank (Nederland) N.V., Fortis Bank S.A./N.V. and Raiffesen Zentral Bank Osterreich AG; and

    b) 20% for the Industrial Bank of Japan and Mizuho Corporate Bank.

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[38] Pages 280-284, CTA Records, CTA Case No. 7166
[39] Page 285, CTA Records, CTA Case No. 7166
[40] Pages 287-288, CTA Records, CTA Case No. 7166
[41] Pages 3-5, JSFI for Trial No. 1; Pages 364, CTA Records, CTA Case No. 6699

8) whether or not the Industrial Bank of Japan and Mizuho Corporate Bank are residents of Japan and Fortis Bank (Nederland) N.V., Fortis Bank S.A./N.V. and Raiffesen Zentral Bank Osterreich AG, respectively, are residents of Netherlands, Belgium and Austria, respectively, for income tax purpose, and for purposes of the relevant treaty provisions between the Philippines and Japan, Netherlands, Belgium, Japan and Austria; and

9) whether or not ITAD Ruling Nos. 099-03 dated July 16, 2003 and 126-03 dated August 18, 2003 are applicable to the transactions involved in these petitions so as to entitle CBK to a refund of excess final withholding taxes in the year 2001 and 2002."

And the issues in Joint Stipulation of Facts and Issues for Trial No. 2:[42]

1) whether or not CBK overpaid final withholding taxes in the year 2003 and is therefore entitled to a refund of its excess final withholding tax payments;

2) whether or not the claim for refund was filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the National Internal Revenue Code, as amended;

3) whether or not Fortis Bank S.A./N.V. and Raiffesen Zentral Bank Osterrich AG have offices in, and are engaged in trade or business in the Philippines;

4) whether or not CBK paid interest to the aforementioned banks on February and May 2003;

5) whether or not CNK remitted and withheld final withholding taxes (on interest payments to the aforementioned banks) to the BIR at the rate of 15% on the above mentioned interest payments on March 10, 2003 and June 10, 2003;

6) whether or not Fortis Bank S.A./N.V. and Raiffesen Zentral Bank Osterreich AG, [respectively], are residents of Belgium and Austria, respectively, for income tax purposes, and for purposes of relevant treaty provisions between the Philippines, and Belgium and Austria; and

7) whether or not ITAD Ruling Bos. 099-03 dated July 16, 2003 and 126-03 dated August 18, 2003 are applicable to the transactions involved in this case so as to entitle CBK to a refund of excess final withholding taxes in the year 2003.

The Court's Ruling

[42] Paragraphs 1-7, Pages 3-4, JSFI for Trial No. 2; Pages 282-283, CTA Records, CTA Case No. 7166

The Court's Ruling

The issues boil down to the following:

I

Whether or not the claim for refund was filed within the two-year prescriptive period provided under Sections 204 (C) and 229 of 1997 Tax Code, as amended;

II

Whether or not petitioner paid interest to the Banks, and remitted and withheld the corresponding final withholding taxes thereon at the following rates:

a) 15% for Fortis Bank (Nederland) N.V., Fortis Bank S.A./N.V. and Raiffesen Zentral Bank Osterreich AG; and

b) 20% for the Industrial Bank of Japan and Mizuho Corporate Bank.

III

Whether or not petitioner overpaid final withholding taxes in the years 2001 to 2003 and is therefore entitled to a refund of its excess final withholding tax payments.

The Court will discuss the issues in seriatim.

Timeliness of the claim for refund

The relevant provisions in the 1997 Tax Code, as amended, are Sections 204(C) and 229 which provide as follows:

> **Section. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless **the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. *(Emphasis supplied)*
>
> xxx xxx xxx

> **Section. 229.** *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 excessively 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 filed after the expiration of two (2) 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. (Emphasis supplied)

In the computation of the two-year prescriptive period, a "year" is understood to be of twelve (12) calendar months, irrespective of the number of days in a month.[43]

From the foregoing, the two-year prescriptive period should be reckoned from the date of filing of petitioner's monthly remittance return of final income taxes withheld.

Thus, petitioner withheld and filed its monthly remittance return of final income taxes withheld, as follows:

Month the final income taxes on interest payments were withheld	Date of filing the monthly Remittance Return of final income taxes withheld	Exh.	Last day of the 2 year prescriptive period within which to make a claim for refund	Date the administrative Claim was filed (Exhibits HH, R5)	Amount Claimed	Date of Petition for Review CTA Case No 6699, 6884 and 7166	Amount Claimed
May 2001	06/11/01	T	06/11/03				
August 2001	09/10/01	V	09/10/03			02/18/04	P 6,393,267.19
November 2001	12/10/01	X	12/10/03				
February 2002	03/11/02	Z	03/11/04	April 14, 2003	P 14,529,495.89		
May 2002	06/10/02	BB	06/10/04				
August 2002	09/10/02	DD	09/10/04			03/05/04	8,136,174.31
November 2002	12/10/02	FF	12/10/04				P14,529,441.50
February 2003	03/10/03	P4	03/10/05				
May 2003	06/10/03	Q4	06/10/05	March 4, 2005	P 1,143,517.19	03/09/05	P 1,143,517.21

[43] *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.*, G.R. No. 162155, August 28, 2007

With the administrative claim filed on April 14, 2003, petitioner filed (1) Petition for Review on June 6, 2003 which was docketed as CTA Case No. 6699,[44] a Supplemental Petition filed on September 10, 2003,[45] then subsequently an Amended Petition for Review on February 18, 2004;[46] and (2) Petition for Review filed on March 5, 2004 which was docketed as CTA Case No. 6884.[47] While the administrative claim filed on March 4, 2005, petitioner filed its Petition for Review on March 9, 2005 which was docketed as CTA Case No. 7166.[48]

Thus, based on the above illustrations, the claims both under the administrative and judicial levels were made within the two-year prescriptive period.

Whether petitioner paid interest to the Banks

A perusal of the records show that petitioner had paid interest to Raiffesen Zentral Bank Osterreich AG, Mizuho Corporate Bank, Ltd, Hong Kong, Fortis Bank (Nederland) N.V., on May 2001, August 2001, November 2001, February 2002, May 2002, August 2002, November 2002, February 2003 and May 2003 as evidenced by an acknowledgment receipt by the Banks,[49] and the Facsimiles[50] reflecting the acceptance of the interest payments by the Inter-creditor Agent due to the concerned banks.

The table below shows the reconciliation of the amount of interest received by the concerned banks and the amounts of interest as bases of the taxes withheld. Thus:

Bank's Acknowledgment Receipt for the ff. Covered Period	Amount (a)	Exh.	Gross Amount	Tax rate	Withholding Tax	Interest net of tax (b)	Exh.	Variance (a-b)
Raiffesen Zentral Bank Osterreich AG								
May 7, 2001	51,105.68	KK	Php 60,124.33	15%	Php 9,018.65	Php 51,105.68	T-1	-
August 7, 2001	49,314.74		58,017.35	15%	8,702.60	49,314.75	V-1	(0.01)
November 7, 2001	47,999.36		56,469.84	15%	8,470.48	47,999.36	X-1	-

[44] Pages 1-11, CTA Records, CTA Case No. 6699
[45] Pages 228-231, CTA Records, CTA Case No. 6699
[46] Pages 291-302, CTA Records, CTA Case No. 6699
[47] Pages 1-13, CTA Records, CTA Case No. 6884
[48] Pages 5-14, CTA Records, CTA Case No. 7166
[49] Exhibits KK, LL, MM, U^5, and V^5
[50] Exhibits RR, YY, FFF, SS, ZZ, GGG, TT, AAA, HHH, UU, BBB, III, VV, CCC, JJJ, WW, DDD, KKK, XX, EEE, LLL, R^4 and S^4

February 7, 2002	41,594.48			48,934.68	15%	7,340.20	41,594.48	Z-1	-
May 7, 2002	43,919.80			51,670.36	15%	7,750.55	43,919.81	BB-1	(0.01)
August 7, 2002	51,109.47			60,128.87	15%	9,019.33	51,109.54	DD-1	(0.07)
November 7, 2002	54,096.84			63,643.34	15%	9,546.50	54,096.84	FF-1	-
Mizuho Corporate Bank Ltd, Hong Kong									
May 7, 2001	251,520.09	LL		314,400.12	20%	62,880.02	251,520.10	T-1	(0.01)
August 7, 2001	242,705.86			303,382.33	20%	60,676.47	242,705.86	V-1	-
November 7, 2001	236,232.12			295,290.14	20%	59,058.03	236,232.11	X-1	0.01
February 7, 2002	204,710.06			255,887.58	20%	51,177.52	204,710.06	Z-1	-
May 7, 2002	216,154.28			270,192.86	20%	54,038.57	216,154.29	BB-1	(0.01)
August 7, 2002	251,538.74			314,423.40	20%	62,884.68	251,538.72	DD-1	0.02
November 7, 2002	266,241.28			332,801.60	20%	66,560.32	266,241.28	FF-1	-
Fortis Bank (Nederland)/N.V.									
May 7, 2001	140,290.09	MM		165,047.17	15%	24,757.08	140,290.09	T-1	-
August 7, 2001	135,373.79			159,263.28	15%	23,889.49	135,373.79	V-1	-
November 7, 2001	131,762.93			155,015.22	15%	23,252.28	131,762.94	X-1	(0.01)
February 7, 2002	114,180.91			134,330.48	15%	20,149.57	114,180.91	Z-1	-
May 7, 2002	120,564.14			141,840.17	15%	21,276.03	120,564.14	BB-1	-
August 7, 2002	140,300.49			165,059.40	15%	24,758.91	140,300.49	DD-1	-
November 7, 2002	148,501.11			174,707.19	15%	26,206.08	148,501.11	FF-1	-
Raiffesen Zentral Bank Osterreich AG									
February 7, 2003	52,104.50	U5		61,299.40	15%	9,194.91	52,104.49	P4	0.01
May 7, 2003	46,777.78			55,033.86	15%	8,255.08	46,778.78	Q4	(1.00)
Fortis Bank (Nederland)N.V.									
February 7, 2003	143,031.92	V5	*	168,272.87	15%	25,240.93	143,031.94	P4	(0.02)
May 7, 2003	128,412.32		**	151,073.33	15%	22,661.00	128,412.33	Q4	(0.01)

Note: *25,240.93 divided by 15%
**22,661.00 divided by 15%

Whether petitioner remitted and withheld final withholding taxes on interest payments to the Banks

As evidenced by BIR Revenue Official Receipts, Monthly Remittance Return of Final Income Taxes Withheld, and Summary of Withholding Taxes,[51] the Court had verified that petitioner withheld final taxes on interest payments and that said taxes were remitted to the BIR. Thus, computed as follows:

Payee	Month the final income tax on interest payments were Withheld	Tax Rate	Tax withheld per Summary	Tax withheld (in Phil. Peso)	Exhibit
Fortis Bank (Nederland) N.V.	May 2001	15%	24,757.08	1,248,746.85	T-1
Industrial Bank of Japan, Limited	May 2001	20%	62,880.02	3,171,668.34	T-1
Raiffesen Zentral Bank Osterreich AG	May 2001	15%	9,018.65	454,900.70	T-1
Fortis Bank (Nederland) N.V.	August 2001	15%	23,889.49	1,262,967.23	V-1
Industrial Bank of Japan, Limited	August 2001	20%	60,676.47	3,207,786.40	V-1
Raiffesen Zentral Bank Osterreich AG	August 2001	15%	8,702.60	460,080.98	V-1
Fortis Bank S.A./N.V.	November 2001	15%	23,252.28	1,195,167.30	X-1
Industrial Bank of Japan, Limited	November 2001	20%	59,058.03	3,035,582.64	X-1

[51] Exhibits T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, I5, P4, J5 and Q4

Raiffesen Zentral Bank Osterreich AG	November 2001	15%	8,470.48	435,382.43	X-1
Fortis Bank S.A./N.V.	February 2002	15%	20,149.57	1,024,001.15	Z-1
Industrial Bank of Japan, Limited	February 2002	20%	51,177.52	2,600,841.57	Z-1
Raiffesen Zentral Bank Osterreich AG	February 2002	15%	7,340.20	373,028.96	Z-1
Fortis Bank S.A./N.V.	May 2002	15%	21,276.03	1,051,035.88	BB-1
Mizuho Corporate Bank, Limited	May 2002	20%	54,038.57	2,669,505.36	BB-1
Raiffesen Zentral Bank Osterreich AG	May 2002	15%	7,750.55	382,877.17	BB-1
Fortis Bank S.A./N.V.	August 2002	15%	24,758.91	1,272,607.97	DD-1
Mizuho Corporate Bank, Limited	August 2002	20%	62,884.68	3,232,272.55	DD-1
Raiffesen Zentral Bank Osterreich AG	August 2002	15%	9,019.33	463,593.56	DD-1
Fortis Bank S.A./N.V.	November 2002	15%	26,206.08	1,369,791.80	FF-1
Mizuho Corporate Bank, Limited	November 2002	20%	66,560.32	3,479,107.93	FF-1
Raiffesen Zentral Bank Osterreich AG	November 2002	15%	9,546.50	498,995.55	FF-1
Fortis Bank S.A./N.V.	February 2003	15%	25,240.93	1,345,843.86	P^4-1
Raiffesen Zentral Bank Osterreich AG	February 2003	15%	9,194.91	490,271.68	P^4-1
Fortis Bank S.A./N.V.	May 2003	15%	1,168,695.75	1,168,695.75	Q^4-1
Raiffesen Zentral Bank Osterreich AG	May 2003	15%	425,739.24	425,739.24	Q^4-1
TOTAL TAX WITHHELD				**36,320,492.85**	

The table shows the summary of the taxes withheld by petitioner on the interest payments made to Fortis Bank (Nederland) N.V., Industrial Bank of Japan, Limited, Raiffesen Zentral Bank Osterreich AG, Fortis Bank S.A./N.V., and Mizuho Corporate Bank, Limited in the total amount of P36,320,492.85.

RP Tax Treaties

Under Revenue Memorandum Order No. 01-2000 of the BIR, the availment of a tax treaty provision must be preceded by an application for a treaty relief with its International Tax Affairs Division (ITAD). Its objective is to avert any erroneous interpretation and/or application of the treaty provisions before proceeding with the transaction and/or paying the tax liability covered by the tax treaty.

In **Mirant (Philippines) Operations Corporation (formerly Southern Energy Asia-Pacific Operations [Phils.] Inc.,) vs. Commissioner of Internal Revenue**,[52] this Court *En Banc* ruled that the implementation of the Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the

[52] CTA EB No. 40 [CTA Case No. 6382] June 7, 2005

benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.

Thus, rulings issued in accordance therefrom, confirms whether or not the preferential tax rate applies to a particular transaction involved.

As borne by the records, Fortis Bank S.A./N.V., Fortis Bank (Nederland) N.V., and Raiffesen Zentral Bank Osterreich AG are residents of Belgium, Netherlands and Austria, respectively;[53] while, the Industrial Bank of Japan, Limited and Mizuho Corporate Bank, Limited are residents of Japan.[54] Further, except for Mizuho Corporate Bank, Limited, the Banks do not have offices in, and are not engaged in trade or business in the Philippines.[55]

Pursuant to DA-ITAD Ruling No. 099-03 dated July 16, 2003 issued by the BIR, the interest payments to be made by petitioner [CBK] to International Bank of Japan and Raiffesen Zentral Bank Osterreich AG are subject to Philippine final withholding tax rate of ten percent (10%) of the gross amount of interest pursuant to Article 11 of the RP Austria and RP-Japan tax treaties. On the other hand, the interest payments of petitioner [CBK] to Fortis and [Unicredito] are subject to fifteen percent (15%) final withholding tax rate pursuant to Article 11 of the RP-Belgium and [RP-Italy] tax treaties.[56] It further states that the mere fact of participation by a parent company as lender under a loan agreement is made through a branch does not obviate the operation of the provisions of the tax treaty with the residence country of the former since a branch has no distinct and separate juridical personality from that of its parent company.[57]

However, in DA-ITAD Ruling No. 126-03 dated August 18, 2003 also issued by the BIR, the interest payment to Fortis by petitioner [CBK] pursuant to Omnibus Credit and Security Agreement is subject to a preferential rate of ten percent (10%) pursuant to the

[53] Exhibits NN, OO, PP and P^5
[54] Exhibits K^5, L^5, Q^5, M^5 and S^5
[55] Exhibits C, D, E and O^5
[56] Exhibit J; Page 6
[57] Exhibit J, Page 2

Protocol Amending the RP-Belgium tax treaty which provisions apply on income derived or which accrued beginning January 1, 2000, thereby modifying BIR Ruling No. DA-ITAD 099-03 in so far as the declarations therein are inconsistent herewith.[58]

Inasmuch as petitioner had established that the relevant treaty provisions between the Philippines and of Belgium, Austria and Japan are applicable to its case, the option to avail of the preferential tax rates are in order.

Albeit nowhere in the aforementioned rulings pertains to the interest payments made to Fortis Bank (Nederland) N.V., this Court may grant such tax relief.

When petitioner filed a Petition for Review with this Court, it transformed the administrative claim into a judicial claim for refund. Section 3, (a)(2), Rule 4, Republic Act No. 1125 as amended by RA 9282, states:

Rule 4

> **Section 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other law administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx

Thus, for this Court's purposes, the required ITAD Ruling is not a condition *sine qua non* for the entitlement of the tax relief sought for by the petitioner. Further, the ITAD Ruling was specifically issued to petitioner with regard to the Agreement, and petitioner was able to prove that it had complied with the treaty provisions.

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[58] Exhibit K; Page 2

Refund of excess final withholding taxes

With the foregoing disquisitions, petitioner is entitled for a refund of excess final withholding tax in the amount of P15,672,958.42, computed as follows:

Withholding Tax Remittance on the following dates (for the following payee)	Amount of Tax Withheld (a)	Tax Rate (b)	Gross amount Of Interest Payments (a / b) = c	Alleged correct tax rate (d)	Tax supposedly withheld (c x d) = e	Overpaid Final Tax (a-e)
CTA Case No. 6699:						
06/11/01						
Fortis Bank (Nederland) N.V	P 1,248,746.85	15%	P 8,324,979.00	10%	P 832,497.90	P 416,248.95
Industrial Bank of Japan, Limited	3,171,668.34	20%	15,858,341.70	10%	1,585,834.17	1,585,834.17
Raiffesen Zentral Bank Osterreich AG	454,900.70	15%	3,032.671.33	10%	303,267.13	151,633.57
Sub-total	P 4,875,315.89				P 2,721,599.20	P 2,153,716.69
09/10/01						
Fortis Bank (Nederland) N.V	P 1,262,967.23	15%	8,419,781.53	10%	P 841,978.15	P 420,989.08
Industrial Bank of Japan, Limited	3,207,786.40	20%	16,038,932.00	10%	1,603,893.20	1,603,893.20
Raiffesen Zentral Bank Osterreich AG	460,080.98	15%	3,067,206.53	10%	306,720.65	153,360.33
Sub-total	P 4,930,834.61				P 2,752,592.01	P 2,178,242.60
09/10/01						
Fortis Bank S.A./N.V.	P 1,195,167.30	15%	7,967,782.00	10%	P 796,778.20	P 398,389.10
Industrial Bank of Japan, Limited	3,035,582.64	20%	15,177,913.20	10%	1,517,791.32	1,517,791.32
Raiffesen Zentral Bank Osterreich AG	435,382.43	15%	2,902,549.53	10%	290,254.95	145,127.48
Sub-total	P 4,666,132.37				P 2,604,824.47	P 2,061,307.90
CTA Case No. 6884:						
03/11/02						
Fortis Bank S.A./N.V.	P 1,024,001.15	15%	6,826,674.33	10%	P 682,667.43	P 341,333.72
Industrial Bank of Japan, Limited	2,600,841.57	20%	13,004,207.85	10%	1,300,420.79	1,300,420.79
Raiffesen Zentral Bank Osterreich AG	373,028.96	15%	2,486,859.73	10%	248,685.97	124,342.99
Sub-total	P 3,997,871.68				P 2,231,774.19	P 1,766,097.49
06/10/02						
Fortis Bank S.A./N.V.	P 1,051,035.88	15%	7,006,905.87	10%	P 700,690.59	P 350,345.29
Mizuho Corporate Bank, Limited	2,669,505.36	20%	13,347,526.80	10%	1,334,752.68	1,334,752.68
Raiffesen Zentral Bank Osterreich AG	382,877.17	15%	2,552,514.47	10%	255,251.45	127,625.72
Sub-total	P 4,103,418.41				P 2,290,694.71	P 1,812,723.70
09/10/02						
Fortis Bank S.A./N.V.	P1,272,607.97	15%	8,484,053.13	10%	P 848,405.31	P 424,202.66
Mizuho Corporate Bank, Limited	3,232,272.55	20%	16,161,362.75	10%	1,616,136.28	1,616,136.28
Raiffesen Zentral Bank Osterreich AG	463,593.56	15%	3,090,623.73	10%	309,062.37	154,531.19
Sub-total	P4,968,474.08				P 2,773,603.96	P 2,194,870.12
12/10/02						
Fortis Bank S.A./N.V.	P1,369,791.80	15%	9,131,945.33	10%	P 913,194.53	P 456,597.27
Mizuho Corporate Bank, Limited	3,479,107.93	20%	17,395,539.65	10%	1,739,553.97	1,739,553.97
Raiffesen Zentral Bank Osterreich AG	498,995.55	15%	3,326,637.00	10%	332,663.70	166,331.85
Sub-total	P5,347,895.28				P 2,985,412.20	P 2,362,483.08
CTA Case No. 7166:						
03/10/03						
Fortis Bank S.A./N.V.	P1,345,843.86	15%	8,972,292.40	10%	P 897,229.24	P 448,614.62
Raiffesen Zentral Bank Osterreich AG	490,271.68	15%	3,268,477.87	10%	326,847.79	163,423.89
Sub-total	P1,836,115.54				P 1,224,077.03	P 612,038.51
06/10/03						
Fortis Bank S.A./N.V.	P 1,168,695.75	15%	7,791,305.00	10%	P 779,130.50	P 389,565.25

Raiffesen Zentral Bank Osterreich AG	425,739.24	15%	2,838,261.60	10%	283,826.16	141,913.08
	Sub-total P 1,594,434.99				P 1,062,956.66	P 531,478.33
Refundable amount						**P 15,672,958.42**

WHEREFORE, the Petitions for Review are hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of **FIFTEEN MILLION SIX HUNDRED SEVENTY TWO THOUSAND NINE HUNDRED FIFTY EIGHT AND FORTY TWO CENTAVOS (P15,672,958.42)** representing its excess final withholding tax for the years 2001 to 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division