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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS as Trustee of the Employees' Retirement Fund of Levi Strauss Administration and Officers, Levi Strauss (Plant) Employees, Ciba-Geigy Employees, Pilipinas Shell Petroleum Corporation, Johnson and Johnson Phils. Inc., Purefoods Corporation, Coca-Cola Export Corporation, Eli-Lilly Phils. Inc., Shell Chemical Co. Inc., PLDT Beneficial Trust, Du-Font Far East Filipinas, Hawaiian Phils. Co., Intel Phils. Mfg. Inc., Mobil Phils., Inc. Tapat Park Dev. Corp. Bristol Laboratories, Inc. Proctor & Gamble (Phils.) Inc., Mapua Institute of Tech., Wellington Investments & Mfg. Corp., United Laboratories, Inc., Nestle Phils. Inc., Canlubang Sugar Estate, FL-Agency Force, Avon Cosmetics Inc., Benguet Corporation, International School, Goodyear Phils. Inc., INSCOS Employees, Citibank N.A., Kimberly Clark Philippines, Inc., Astra Pharmaceutical, Inc., IBM Philippines, Inc., Eveready Battery Phils. Inc., American Microsystems, Inc., Engineering Equipment, Inc., Bank of America, N.A., Sime Darby Pilipinas, Inc., Mead Johnson (Phils.) Inc., Del Monte Philippines, Inc., Visayan Electric Company, Inc.,

Petitioner,

- versus -

C.T.A. CASE NOS. 4730 to 4770

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

APR 22 1996

x - x

D E C I S I O N

A consolidation of the above-mentioned forty-one (41) cases docketed as C.T.A. Case Nos. 4730 up to 4770 were ordered by this Court upon motion of petitioner Bank of the Philippine Islands. Considering that the subject matter, the parties and the antecedent facts of the abovementioned cases are similar in nature, it is but proper to have the case consolidated and tried jointly by this Court.

Petitioner as trustee of the employees' retirement fund of the various companies/institutions, uniformly seeks the refund of the final withholding taxes alleged to have been erroneously deducted and withheld by the Central Bank of the Philippines (CB) and remitted to the Bureau of Internal Revenue (BIR) in connection with petitioner's purchases of government securities, specifically treasury bills, for the period beginning January 8, 1990 to December 12, 1990.

A written claim for refund was filed with the BIR on April 4, 1991 with respect to C.T.A. Case Nos. 4732 to 4741, 4746 to 4770 and on February 13, 1992 with respect to CTA Case Nos. 4730 to 4732, 4742 to 4745 considering that the two-year prescriptive period to commence proceedings for the recovery/refund of the tax erroneously collected is about to expire and that the claim for refund remains unacted upon by the respondent, petitioner is compelled to file these petitions for review to interrupt said prescriptive period.

Petitioner maintains that subject retirement plans meet the requirements of a reasonable benefit plan prescribed by Republic Act No. 4917, as implemented by Revenue Regulations No. 1-68. They were approved as exempt from income tax, hence, the income/yield derived from its investment in government securities is likewise tax exempt.

In all the fourty-one (41) petitions for review, respondent in its Answer argued that Presidential Decree No. 1959 which took effect on October 15, 1984, amended the aforesaid sections by deleting the said proviso granting exemption from final tax on interest from bank deposits and/or deposit substitutes to those recipients who are exempted from income taxation.

Respondent likewise maintain that the instant claim for refund has prescribed allegedly, for having been filed out of the two-year prescriptive period mandated by law.

Moreso, it also averred by respondent that the exemption from final tax on interest on bank deposits and deposit substitutes which petitioner previously enjoyed was in pursuant to R.A. NO. 4917; in relation to Section 56(b) now Section 56(b) of the NIRC therefore, it can no longer invoke the aforesaid section to claim exemption from the final tax imposed by Section 21 (d) and 24 (cc) now Section 21(c) (1) and 24(e) (i) of said Code on earnings derived from interest on bank deposits and or deposit substitutes because Presidential Decree No. 1959, which took effect on October 15, 1984, amended said Section 21(d) and 24(cc) of the Tax Code by deleting the provision granting such tax exemption. Respondent argues further that petitioner failed to establish that the tax subject of its claim for refund was actually withheld and remitted to respondent. (Answer, CTA Records)

The sole issue to be resolved in this case is whether or not petitioner as trustee of the various retirement funds in these cases is entitled to a refund of the taxes withheld by the Central Bank of the Philippines on purchases of treasury bills from January 8, 1990 to December 12, 1990.

A careful review of our jurisprudence would reveal that the arguments raised by respondent are already thrown into oblivion. As held in the case of Commissioner of Internal Revenue vs. Court of Appeals, GCL Retirement Plan (G.R. No. 95022, March 23, 1992; 207 SCRA 487) wherein it held and We quote:

"To begin with, it is significant to note that GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Rep. Act. No. 4917 approved on 17 June 1967. This law specifically provided:

> "**SECTION 1.** Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;" x x x (emphasis ours).

In so far as employees' trusts are concerned, the foregoing provision 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:

> "Sec. 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.
>
> xxx xxx xxx
>
> "(b) Exception. - The tax imposed by this Title shall not apply to employee's 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 from 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 d'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 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 <u>together with the income of the pension trust</u> are exempt from any tax, assessment, fee, or charge, it is proposed that, a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representative, 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 1966, 23 SCRA 715); (Underscoring 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 deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, cannot be deemed to extend to employees' trusts. Said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which exempted employees' trusts in Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (**Villegas vs. Subido**, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

Notably, too, all the tax provisions herein treated of come under Title II of the Tax Code on "Income Tax." Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under

Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII. Section 56(b), taken in conjunction with Section 56(a), supra, explicitly excepts employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax" it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b]), (now 53[b], Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payments at the source. If an employee' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

Petitioner also relies on Revenue Memorandum Circular 31-84, dated 30 October 1984, and Bureau of Internal Revenue Ruling No. 027-e-000-00-005-85, dated 14

January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No. 1959 is a clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Pres. Decree No. 1959 did not have the effect of revoking the tax exemption enjoyed by employees' trusts, reliance on those authorities is now misplaced."

After disposing all the legal issues raised in the petition, We will now deal squarely as to whether or not petitioner has established the factual elements of its cases.

We rule in the negative.

Although petitioner was able to show that the individual retirement plan for each of the above trust funds were duly approved as such, and that most of the final taxes were withheld by the Central Bank of the Philippines on the interest income of the treasury bills it bought from the same bank, we are constrained to put little or no probative value to the other evidences it submitted.

Respondent's argument is well taken when it raised an objection to the purpose for which petitioner's Schedules of Investment in Government Securities and their corresponding Confirmation of Sale Without Recourse/Confirmation Advices are being offered. It was respondent's position that petitioner was not able to establish the fact that the assets of the various trust funds were actually used in the purchase of government securities by the latter, and that the final taxes withheld thereon were in behalf of said funds, and not by the petitioner in its own juridical capacity as a banking institution.

The records reveal that some of the treasury bills bought by petitioner through its Treasury Department were in turn sold to its Trust Department for the account of the various retirement funds. A perusal of the Confirmation Sale Without Recourse/Confirmation Advice papers evidencing such sale shows that they were sold to the attention of either BPI Investment Banking For Various Tax-Exempt Accounts or BPI Investment Banking For Taxable Accounts. It must be pointed out that sometime in 1991 before the promulgation by the High Court on

March 23, 1992 of the GCL case, retirement plans were held liable for the twenty percent (20%) final tax on interest and/or yield on deposit substitute instruments paid or accrued beginning August 1, 1986 pursuant to Executive Order No. 37 which took effect on same date.

From the foregoing, it shows that the Treasury Department sold treasury bills to BPI Investment Banking and not to the Trust Department per se as claimed by petitioner. The records do not reveal that they are one and the same entity. It can be said that the former could be catering to other non-trust clients with either tax-exempt or taxable status, or a combination of both.

It can very well be concluded that even though the individual sale of treasury bills was actually made to petitioner's Trust Department, it does not necessarily follow that such sale was intended for a particular trust fund involved herein. It could be that the sale was for the account of individuals and corporations aside from retirement plans.

It is to be considered that in the year 1991, retirement plans were taxable as to their income or interest and/or yield on deposit substitute instrument which definitely includes treasury bills, and yet the Confirmation of Sale Without Recourse/Confirmation Advice papers reveal that the Treasury Department of petitioner sold treasury bills to the attention of various tax-exempt accounts. Verily, the sale of treasury bills to tax-exempt accounts at the time were really never intended for the trust funds involved herein.

On the other hand, treasury bills sold by the Treasury Department to BPI Investment Banking for the various taxable accounts could not possibly refer as a whole to the subject trust fund because it could have been invested to non-trust accounts or other categories of trust funds which is also taxable in the absence of any showing to the contrary.

As viewed from another perspective, it can very well be noticed that some of the treasury bills sold runs counter to petitioner's contention that said bills were actually bought from Central Bank.

As pointed out by respondent there was an absence of evidence to show that the assets of the various trust fund were actually used in the purchase of treasury bills. Instead, what was established was the transaction between the Treasury Department and Trust Department, but not the one between the Trust Department and the individual trust fund.

Evidently, the deposit accounts of the trust funds will have to be debited in the purchase of the treasury bills and the corresponding receipt or acknowledgment, in any convenient form, will have to be issued as proof of payment. Petitioner must have documented or made entries on such transactions. It is to be observed that under the "Other Terms and Conditions" clause of the Confirmation of Sale Without Recourse document, more particularly numbers 2 and 4 thereof, any sale, transfer or assignment of the treasury bills shall be valid only if said transaction is *registered* in the books of the petitioner. Likewise, petitioner reserves the right to cancel the sale in the event that the check used for the purchase of the securities has been dishonored by the drawee bank/or the payment made thereon has not *cleared or collected.*

The foregoing incidents however are not shown in the records of the case.

To rely merely on the good faith of the petitioner, by taking as gospel truth the contents of the Schedule of Investments in Government Securities prepared by its employees, would be to upset the scales of justice to the prejudice of the losing party. We cannot do that, after all Court decisions are based on incontrovertible evidence on record and not on good faith, or speculation or unsupported assumptions.

It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (Associated Sugar, Inc. vs. CIR, CTA Case No. 2944, May 6, 1994, p. 4 citing **Insular Lumber Co. vs. CTA,** 104 SCRA 721 and CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549)

WHEREFORE, in view of insufficiency of evidence necessary to support the claims of the petitioner, the instant consolidated cases under petition for review are hereby DENIED for lack of merit.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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