REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS as Trustee of the Eveready Battery Philippines, Inc., Retirement Fund (RTF), Benguet Corporation, RTF, IBM Philippines, Inc., RTF, Johnson & Johnson Phils., Inc., RTF, Coca-Cola Export Corp. (Fund A), RTF, Filipinas Shell Petroleum Corp., RTF, INSCOS Employees' RTF, Citibank, N.A., RTF, Procter & Gamble Philippines, Inc., RTF, Del Monte Philippines, Inc., RTF, PAL Pilot RTF, Engineering Equipment, Inc., RTF, Eli-Lilly Phils., Inc., RTF, Nestle Philippines, Inc., RTF, Ciba-Geigy Employees, RTF, Goodyear Philippines, Inc., RTF, Du-Pont Far East Phils., Inc., RTF, Sime Darby Philippines, Inc., RTF, Avon Cosmetics, Inc., RTF, Tapat Park Development Corp., RTF, Bank of America, RTF, American Microsystems, Inc., (AMI) RTF, International School RTF, Levi-Strauss Administration, RTF, Levi-Strauss Employees' RTF, Mobil Philippines, Inc., RTF, Bank of America NT & SA Employees' RTF, Philippine Remnants Co., Inc., RTF, FL-Agency Force RTF, Coca-Cola Export Corp. (Fund B), RTF, Canlubang Sugar Estate, RTF, Wellington Investment and Manufacturing Corp., RTF, Mead-Johnson (Phils.), Inc., RTF, Bristol Laboratories, Phils., Inc., RTF, Mapua Institute of Technology, RTF, Purefoods Corporation, RTF, United Laboratories, Inc., RTF, PLDT Beneficial Trust, RTF, Astra

Pharmaceutical, Inc., RTF, Insular Life Employees' RTF, American Wire & Cable Multi-Employer, RTF, Hawaiian Philippines Co., Inc., RTF,

Petitioner,

- versus -

C.T.A. CASE NOS. 4898
4900 TO 4940

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

OCT 11 1995

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DECISION

Presented before Us are forty-two (42) consolidated cases of petition for review, docketed as C.T.A. Case Nos. 4898; and 4900 up to 4940, for the refund of the aggregate amount of P9,692,325.02 allegedly representing final taxes withheld from interest income earned on government securities purchased by petitioner covering the period January 1, 1991 up to December 31, 1991.

The facts are as follows:

Petitioner is a corporation organized and existing under the laws of the Philippines, and is engaged, among others, in trust functions and activities. It is the duly appointed trustee of the abovenamed retirement funds (funds for brevity), set up in accordance with their respective Retirement Benefit Plan. As such, it holds, manages, invests and reinvests the assets of the funds in conformity with the trust agreement entered by each of them.

The aforesaid Plan provides for retirement, death, and disability benefits to its members and, in all these cases, except for one, infra, were approved and qualified as exempt from income tax by respondent, after having established that they satisfied the requirements of a reasonable benefit plan as provided under Republic Act No. 4917, and as implemented by Revenue Regulations No. 1-68.

For the period beginning January 2, 1991 until December 23, 1991, petitioner allegedly invested assets of the various funds in government securities, specifically treasury bills, that earned a total net interest income of P38,769,300.06. In all the transactions made by petitioner, the Central Bank of the Philippines which is the entity that sold the government securities allegedly withheld, prepaid and remitted to the Bureau of Internal Revenue (BIR) the amount of P9,692,325.02 as corresponding final taxes on the interest income.

Realizing the exempt status of the various funds, petitioner filed a written claim for refund with the respondent in a letter, dated December 29, 1992, and asserted therein that the income/yield derived from the investment of the trust funds in government securities is tax-exempt under Republic Act No. 4917.

Considering, however, that the two-year prescriptive period to commence a judicial suit or proceeding for refund prescribed under Section 230 of the National Internal Revenue Code, Tax Code for short, is about to expire, and that, the administrative claims are still unacted upon by respondent, petitioner moved to toll the running of said period.

Hence, this appeal.

In all the cases at bar, petitioner restates in substance its earlier allegations surrounding the refund made before the respondent.

Respondent uniformly contends that while petitioner claims to be entitled to income tax exemption on the earnings of the trust funds pursuant to R.A. No. 4917, "in relation to Section 56(b), now Section 53(b)" of the Tax Code, it can no longer rely on the latter section to justify its claim for exemption from the final tax imposed by Sections 21(d) and 24(cc), now Section 21(c)(1) and 24(e)(1) of the same 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 proviso granting such tax exemption. Respondent argues further that petitioner failed to establish that the tax subject of its claim for refund was erroneously or illegally collected. (Answer, CTA records)

Records show that petitioner formally offered in evidence for each of the consolidated cases the following documents and testimonies, namely: 1) Schedule of Investments in Government Securities made by the petitioner for the year 1991, prepared by it per trust fund, indicating, among other things, the face value and maturity value of the treasury bills purchased, the prepaid final taxes, the Confirmation of Sale document numbers, and the refundable withholding taxes, 2) Confirmation of Sale documents issued by the Treasury Department of the petitioner and allegedly sold in favor of the Trust Department, also of the petitioner indicating the date of sale, serial numbers, maturity dates, face amount, yields, prepaid taxes and selling price of the treasury bills, 3) Certifications issued by the BIR confirming the tax exempt status of the retirement plans subject of these cases under R.A. No.

4917 and pertinent BIR regulations, 4) Worksheets of the Bangko Sentral ng Pilipinas, formerly Central Bank of the Philippines, showing entries of some treasury bills purchased by petitioner in the year 1991, their issue and maturity dates and final taxes withheld and paid to respondent's Bureau, 5) Official Certification from the Government Securities Department of the Bangko Sentral ng Pilipinas showing the treasury bills purchased by petitioner in the year 1991 and the amount of taxes withheld for such purchases, 6) the testimony of Mrs. Antonia Palero, a senior clerk at the Trust Department of petitioner, who identified the retirement plans of the various trust plans (TSN, Hearing of January 31, 1994, p. 5), 7) the testimony of Mr. Eugenio B. Lotho, head of the Treasury Operations Department of petitioner during the period January 1992 to June 1993, who together with employees of the trust department caused the preparation of the schedules consisting of the various confirmation of sales without recourse issued by Treasury Department to the Trust Department of the petitioner (TSN, Hearing of May 10, 1994, p. 6), and lastly, 8) the testimony of Mrs. Muriel Joy Caubang, Chief of the Auction and Placement Division of the Government Securities Department of the Bangko Sentral ng Pilipinas, who identified the worksheets stated in number 4 and 5 hereof.

In her comment, respondent presented no objections to the admission of petitioner's evidences, insofar as their existence are concerned, but took exception to the collective purpose for which they are being offered on the grounds that they failed to substantiate the fact of petitioner actually using the assets of the various trust funds involved herein in the purchase of government securities, and that the alleged final taxes were actually paid for and in behalf of said trust funds and not by their trustee Bank, petitioner herein in its own juridical capacity as a banking institution.

The sole issue to be resolved thus centers on 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 interest income earned from purchases of treasury bills in the year 1991.

Firstly, we try to discuss the legal foundation of the cases at bar.

A cursory look into our jurisprudence would readily tell us that the legal arguments advanced by respondent had long been thrown into the dustbin of history. A glimpse of the wisdom of the High Court in **Commissioner of Internal Revenue vs. Court of Appeals, GCL Retirement Plan** (G.R. No. 95022, March 23, 1992; 207 SCRA 487) would explain the infirmity of her position, herself being the petitioner in said case. We quote:

> "To begin with, it is significant to note that the 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. <u>Any provision of law to the contrary notwithstanding,</u> 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 <u>exempt from all taxes</u> 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;" xxx (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, <u>supra,</u> 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 xxx"

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 <u>raison d'etre</u> 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 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 Representatives, Vol. IV, Part. 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue v. Visayan Electric Co., et al., G.R. No. L-22611, 27 May 1968, 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, can not be deemed to extend to employees' trusts. Said Decree, being a general law, can not 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 expected 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 v. 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 withholdings 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 payment at the source. If an employees' trusts 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.

Disposing of the legal aspects of the claim, we next attempt to determine whether petitioner has established the factual elements of its cases.

We rule in the negative.

Notwithstanding the fact that petitioner was able to prove the due approval of the individual retirement plan of each of the above trust funds, except for C.T.A. Case No. 4923 which is absent in the records, 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 has a valid point when she objected to the purpose for which petitioner's Schedules of Investment in Government Securities and their corresponding Confirmations of Sale Without Recourse/Confirmation Advices are being offered. In reiteration, she argues that they did not establish the fact that the assets of the various trust funds were actually used in the purchase of government securities by the petitioner, 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.

As can be gathered from the records, 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. (Memorandum for the Petitioner, p. 81-82, CTA records) A painstaking scrutiny of the Confirmation of 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 is to be noted also that in the year 1991, or prior to the promulgation of the GCL case by the Honorable Supreme Court on March 23, 1992, retirement plans were subjected to 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. (Retirement Plans, Exhibit "C" C.T.A. Case Nos. 4898, 4900, 4902, 4903, 4907, 4912, 4913, etc.)

From the above facts, it is clear 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. The former could be catering to other non-trust clients with either tax-exempt or taxable status, to trust clients with either tax-exempt or taxable status, or a mix of both.

Even if the individual sale of treasury bills was really made to the Trust Department of petitioner, it does not mean that such sale was for the particular trust funds involved herein. The sale could be for the account of individuals and corporations aside from retirement plans. The testimony of Mrs. Antonia Y. Palero bear this out during the hearing of January 31, 1992. We quote:

xxx xxx xxx

Q. And as senior clerk of the Trust Department, Mrs. Witness, what are some of your important functions?

A. Among my functions, I receive <u>documents of individuals and corporations as well as retirement plans</u> who would like to avail of the trust services of the bank.

Q. Are you familiar with these two acts of cases for which you were asked to testify?

A. Yes.

Q. And how come you say, that, Mrs. Witness?

A. Because retirement plans is <u>one of the services</u> which can be availed of in our Trust Department.

xxx xxx xxx

(TSN, Hearing of January 31, 1992, p. 10-11, underscoring supplied)

Of serious consideration, the legal scenario in the year 1991 was that retirement plans were taxable as to their income or interest and/or yield on deposit substitute instrument, which undoubtedly includes treasury bills, and yet, as borne by the Confirmation of Sale Without Recourse/Confirmation Advice papers, the Treasury Department of petitioner sold treasury bills to the attention of the various tax-exempt accounts. In fine, it is not hard to imagine that 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 funds because they could very well have been invested to non-trust accounts or other categories of trust funds which were likewise taxable, absent any showing to the contrary.

From another angle, some of the treasury bills sold fail to reconcile with the averment of petitioner that said bills were bought from the Central Bank of the Philippines.

By way of illustration, the following treasury bills are not reflected on the Bangko Sentral ng Pilipinas' certification of treasury bills purchased by petitioner, to wit:

Series	Confirmation of Sale Without Recourse/ Confirmation Advice No.	Exhibit
1. 90-Q-10	75304, 7530, 000564	"B", "B-1", "B-43"
2. C900411GX	000236	"B-13"
3. C91R13	76765	"B-16"
4. C91R21	000962	"B-21"
5. C900704GX	000661	"B-49"
6. C9009505D/ C9009505E	69016	"B-57"
7. C900704GX	600659, 000660	"B-62", "B-64"

The foregoing premises leaves us no recourse thus but to disregard the probative value of the Confirmation of Sale Without Recourse/Confirmation Advice documents presented by petitioner.

Consequently, the many Schedule of Investments in Government Securities prepared by petitioner have no leg to stand on, and are merely treated as self-serving statements.

Indeed, as correctly posed by respondent, there is no evidence on record to pinpoint the fact that the assets of the various trust funds were actually used in the purchase of the treasury bills. What petitioner has proven is 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 been *cleared or collected.*

These circumstances, however are not shown on the records.

We will just be relying on the good faith of the petitioner if we are going to believe as gospel truth the contents of the Schedules of Investments in Government Securities prepared by its employees. Such a situation is unacceptable. 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.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate 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