REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

C.T.A. CASE NO. 6706

Members:

- versus -

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

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 07 2005

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DECISION

UY, *J.*:

This Petition for Review was filed on June 23, 2003 by petitioner, Philippine National Bank, praying for judgment in its favor ordering the respondent, Commissioner of Internal Revenue, to refund or issue a tax credit certificate in its favor in the amount of One Million Three Hundred Fifteen Thousand Three Hundred Eighty One Pesos and Sixteen Centavos (₱1,315,381.16), Philippine Currency, representing alleged overpayment / over-remittance of 20% final withholding tax on interest income on the savings account of one of its depositors, Simeon Aya-ay at its Iligan Branch.

Petitioner claims that the interest rate credited in the savings account of Simeon Aya-ay for the period from December 31, 1999 until June 30, 2001 was erroneously over-computed, thus, resulting in the overpayment of final withholding taxes to respondent.

THE FACTS

Petitioner Philippine National Bank ("PNB") is a private commercial banking institution duly organized and existing under the laws of the Republic of the Philippines, with principal office at the PNB Financial Center, Pres. Diosdado Macapagal Blvd., Pasay City. In the course of its business operations, petitioner, through its branches, accepts savings and time deposits from the public and the interest on these savings and time deposits is subjected to a final tax.

On the other hand, respondent Commissioner of Internal Revenue is the government official empowered to perform the duties of the Bureau of Internal Revenue, including, among others, the power to decide, approve and grant refunds and/or tax credits of excess or overpaid taxes, with office address at BIR National Office Building, Diliman, Quezon City.

On September 13, 1999, PNB-Iligan Branch was converted from Retail Banking System ("RBS") to Dimension International System ("DIS"). Thus, a conversion process was conducted which included the updating of Customer Information File ("CIF") under the new system.

On September 27, 1999, the Savings Account Change ("SVC") functions were executed on the account information file of one of its depositors, Simeon L. Aya-ay. By reason of the change, an interest credit at 4000.2% was erroneously applied instead of 2%. This bloated the interest income of Simeon Aya-Ay's Savings Account No. 410-

528401-8. Subsequently, petitioner remitted the amount of P1,315,381.16 to the Bureau of Internal Revenue ("BIR") as a final withholding tax on the deposit of Aya-ay from December 1999 to June 2001.

Upon discovery of the error, the Iligan Branch of petitioner filed with respondent on December 11, 2001, a claim for refund in the amount of ₱1,315,381.16 representing petitioner's alleged overpayment/remittance of the 20% final withholding tax on interest in the savings deposit of Mr. Aya-ay *(Exhibit "A", CTA Records, p. 6)*. The amount sought to be refunded is computed as follows:

Quarter Ending	Remittance Date	Taxes Due	Actual Remittance	Over Remittance
12/31/1999	1/25/00	P 340,924,616.44	P 340,953,178.74	P 28,562.30
3/31/2000	4/25/00	334,117,393.00	334,165,652.52	48,013.52
6/30/2000	7/25/00	323,782,451.35	323,858,480.07	76,028.72
9/30/2000	10/25/00	348,006,390.60	348,137,830.05	131,439.45
12/31/2000	1/25/01	418,499,618.64	418,728,000.31	228,381.67
3/31/2001	4/25/01	330,849,087.12	331,156,245.36	307,158.24
6/30/2001	7/25/01	289,966,292.61	290,462,089.87	495,797.26
TOTAL		P2,386,146,095.76	P2,387,461,476.92	P1,315,381.16

In a Letter dated April 4, 2003, received by petitioner on April 21, 2003, respondent, through its then Assistant Commissioner, Edwin R. Abella, denied petitioner's request for tax refund as "the determination of all internal revenue tax liabilities including and not limited to gross receipts taxes is on a bank wide basis and not on a per branch basis" *(Exhibit "B", CTA Records, p. 7)*.

A request for reconsideration on the ground that there is no specific provision in the Tax Code allowing the grant of refund or issuance of tax credit certificate on a 'per branch basis' was likewise denied by respondent, through its Chief of the Large Taxpayers Audit and Investigation Division I , Aida N. Florencio *(Letter dated May 2, 2003, Exhibit "C", CTA Records, p. 8)*.

Hence, this petition.

THE ISSUES

In the Joint Stipulation of Facts and Issues filed on December 1, 2003, both parties agreed to submit for the Court's determination the following issues:

> 1. "Whether there was accrued to PNB-Iligan Branch's depositor Simeon Aya-ay a bloated interest income, the interest rate of his savings account having been erroneously increased from 2% to 402% due to computer error when PNB converted from Retail Banking System (RBS) to Dimension International System; and,
>
> 2. Whether or not PNB overpaid/over-remitted the 20% final withholding tax on the bloated interest income of PNB's depositor Mr. Simeon Aya-ay for the period from September 1999 to June 2001" *(Joint Stipulation of Facts and Issues, CTA Records, pp. 50-51).*

THIS COURT'S RULING

The issues raised are factual.

From petitioner's evidence, the Court is convinced that petitioner erroneously applied an increased rate of interest income of 4000.2% in Simeon Aya-ay's savings account number 410-528401-8, in contrast with the usual 2% interest earned from an ordinary savings account computed by petitioner bank on a per annum basis *(Savings Account No. 410-528401-8 Passbook, Exhibit "F", CTA Records, pp. 70-81).*

This matter was stated in the Memorandum of Agreement executed on November 12, 2000 by petitioner and Simeon Aya-ay, wherein the latter admitted that the amount of interest credited in his account exceeded the actual amount of the account he was maintaining with the bank *(Memorandum of Agreement, Exhibit "E", CTA Records, p, 69).*

However, petitioner failed to establish, by way of supporting documentary exhibits, that the remittances for the second quarter of taxable year 2001, as reflected in its Quarterly Remittance Return of Final Income Taxes Withheld for the total amount of P1,199,125.95, includes the supposed 20% final withholding taxes imposed on the bloated interest income on the savings account of Simeon Aya-ay *(Exhibit "Y", CTA Records, p. 106).*

Absent such documentary evidence, the Court is left to speculate whether the final withholding tax on Mr. Aya-ay's bloated interest income actually formed part of the amount which petitioner remitted to the Bureau of Internal Revenue. Correspondingly, this petition will not prosper due to insufficiency of evidence.

Lastly, granting for the sake of argument that petitioner has substantiated the claim, the right to file judicial claim of a majority of the remittances have already prescribed pursuant to Section 229 of the National Internal Revenue Code (or NIRC), which reads:

> "**Sec. 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 therefore, 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.

A claim for refund is a procedure by which a taxpayer informs the Bureau of Internal Revenue in writing of his view that he is entitled to a refund of all or part of the taxes paid by him in earlier years *(Barron's Law Dictionary, 2003 Edition, p. 80).*

This claim for refund however, is subject to the statute of limitations and the filing of a timely claim is a necessary prerequisite to any allowance of a refund by the Government or of any suit by the taxpayer against the Government for the allowance of a claimed refund. Thus, a taxpayer who paid the tax and filed a claim for refund thereof with the Commissioner of Internal Revenue must file a suit in court within the statutory period of two years without waiting for the decision of the Commissioner of Internal Revenue ***(Commissioner v. Victorias Milling Co., Inc., 22 SCRA 12)***.

Petitioner's claim for refund pertains to the alleged overpayment of final withholding tax imposed under Section 24 (B)(1) of the NIRC which is a final tax that is imposed on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements.

It appears that upon discovery of the alleged over-remittance/payment of subject final withholding taxes, petitioner seasonably filed a claim for refund with the Bureau of Internal Revenue on December 11, 2001, covering the following remittances:

Quarter Ending	**Remittance Date**
December 31, 1999	January 25, 2000
March 31, 2000	April 25, 2000
June 30, 2000	July 25, 2000
September 30, 2000	October 25, 2000
December 31, 2000	January 25, 2001
March 31, 2001	April 25, 2001
June 30, 2001	July 25, 2001

From denial of petitioner's claim by the Bureau of Internal Revenue in a letter dated May 20, 2003, petitioner filed this petition for review on June 23, 2003. Thus, petitioner's right to judicially file a claim for refund of the remittances for the following quarters has prescribed for having been filed beyond the two (2)-year prescriptive period, to wit:

(a) Fourth quarter of taxable year 1999 paid on January 25, 2000;

(b) First, second, third and fourth quarters of taxable year 2000 which it paid on April 25, 2000, July 25, 2000, October 25, 2000 and January 25, 2001, respectively; and,

(c) First quarter of taxable year 2001 which it paid on April 25, 2001.

It is only petitioner's claim for refund in the amount of ₱495,797.26 covering remittances for the second quarter of taxable year 2001, and paid on July 25, 2001, which has not prescribed, but which will nevertheless fail, due to lack of supporting documents or insufficiency of evidence.

Correspondingly, petitioner's claim for refund or issuance of tax credit certificate in the amount of One Million Three Hundred Fifteen Thousand Three Hundred Eighty One Pesos and Sixteen Centavos (₱1,315,381.16), Philippine Currency, representing the alleged erroneous payments of 20% final withholding tax on interest income will not prosper on two grounds, due to insufficiency of evidence, and due to partial prescription of the claims for refund covering the remittances for the period from the last quarter of taxable year 1999 paid on January 25, 2000, until the first quarter of the taxable year 2001 paid on April 25, 2001.

A claim for refund is in the nature of a claim for exemption and should, therefore, be strictly construed in *strictissimi juris* against the taxpayer ***(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332)***.

WHEREFORE, premises considered, this petition for review is hereby **DISMISSED** due to insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman