REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PNB PROVIDENT FUND,
Petitioner,

- versus -

C.T.A. CASE NO. 4896

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 05 1997

x - x

DECISION

This is a claim for refund of P68,088,425.08 representing 20% withholding taxes on treasury bills and Central Bank (CB) Bills sold or purchased by the Philippine National Bank to herein petitioner on various dates covering the years 1990 and 1991 and the months of January to September 1992 (Amended Petition for Review, CTA records).

Petitioner is an employees' trust established by the PNB Board of Directors pursuant to Section 11(f)) of Executive Order No. 80, otherwise known as the 1986 Revised PNB Charter. As such, it has been duly qualified and approved as a tax exempt organization under Section 53(b) [formerly Section 56(b)] of the Tax Code as provided in BIR Ruling No. 089-91, dated May 21, 1991 (Exh. B), and the letters of the BIR dated June 28, 1979 (Exh. C) and April 11, 1969 (Exh. D) and August 30, 1993 (Exh. J), all reiterating its tax exempt status.

The facts are simple.

On October 29, 1992, petitioner filed with respondent a letter-claim for refund of the amount so aforestated on account of its tax exempt status (Exh. "E").

Two months later, on December 29, 1992, petitioner filed the instant petition for review, with an amended petition filed on February 22, 1993, alleging respondent's failure to grant the refund being sought and the need to preserve its right to judicially claim the same.

In her answer to the amended petition for review, respondent raised, among others, the following special and affirmative defenses, to wit:

> "5. The petition does not state a cause of action as there is no allegation when the tax sought to be recovered was paid.
>
> 6. One who claims to be entitled to income tax exemption on the earnings of its employees' trust under Republic Act No. 4917 in relation to Section 53(b) of the National Internal Revenue Code (NIRC) can not claim exemption from the final tax imposed by Sections 21(c)[1] and 24(e)[1] of the NIRC for earnings derived from interest on bank deposits and/or deposit substitutes.
>
> 7. The provisions granting exemption from the final tax on interest on bank deposits and/or deposit substitutes to those who are exempt from income taxation found in Sections 21(d) and 24(c) of the NIRC were deleted by Presidential Decree No. 1599 (sic), which took effect on October 15, 1984. Hence by virtue of the amendments introduced by P.D. 1599 (sic)

the exemption granted under Sections 21(d) and 24(c) (now Sections 21(c)[1] and 24(e)[1], respectively) of the NIRC is considered revoked or withdrawn."

The issues confronting Us may thus be summed up in this wise:

1. Whether or not the amendments introduced by P.D. 1959 have effectively revoked or withdrawn the tax exemption privilege granted by the Tax Code under Section 53(b) on employees' trusts or benefit plans;

2. Whether or not petitioner has proven the factual elements of its claim for refund.

Anent the first issue, the legal disquisition posed by respondent had long been succinctly settled by the Honorable Supreme Court in the case of **Commissioner of Internal Revenue vs. The Honorable Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, represented by its Trustee-Director, 207 SCRA 487**, promulgated on March 23, 1992. It was held therein, thusly:

> "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 excepted employees' trusts in its 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 as income 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 Estate 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."

Verily, employees' trusts, such as herein petitioner, are tax exempt under Section 56(b) [now Section 53(b)] of the Tax Code. Although petitioner is not covered by R.A. No. 4917 [An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax whatsoever], promulgated June 17, 1967, because its employer is a government-owned or controlled corporation and not a private firm, We submit that on the basis of Section 53(b) [formerly Section 56(b), as amended by R.A.

1983, effective on June 22, 1953], petitioner is entitled to tax exemption.

Section 53(b) provides as follows:

> "SEC. 53 **Imposition of tax.** - (a) 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 (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: *Provided*, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee."

This view has been reiterated by the respondent in the person of former Commissioner Jose U. Ong in BIR Revenue Memorandum Order No. 9-93, October 15, 1992, (Exh. "A") which pertinently provides:

> "**Other employees' trust funds** adverted to in this Order shall refer to the trust funds of employees other than those of private employers/companies, the tax exempt qualification of which had been determined/adjudicated by the BIR under the Section 56(b) [now Section 53(b)] of the Tax Code and not under R.A. 4917 or Section 28(b)(7)(A) of the Tax Code, e.g., PNB

> **Provident Fund**, CB Provident Fund, Land Bank of the Philippines Provident Fund, GSIS Provident Fund, NPC Employees' Savings & Welfare Plan, NHA Provident Fund, etc. xxx." (Emphasis supplied, Exh. "A-1".)

From the above discussion, there is no denying the fact that, legally speaking, petitioner is exempt from income tax.

We now go into the factual merit of petitioner's evidence.

After a painstaking scrutiny of all the exhibits presented, We partly find for the petitioner.

The refund of withholding taxes on treasury bills as shown in the schedule submitted by the petitioner, with value date January 24, 1990 up to December 12, 1990 (Exhs. "E-1" and "E-2"), is hereby denied because the same have prescribed in view of the lapse of two years from the date of filing of the instant petition on December 29, 1992.

Section 230 of the Tax Code precisely provides, thus:

> **"SEC. 230. Recovery of tax erroneously or illegally collected.** - x x x. In any case, no such suit or proceeding shall be begun after the expiration of two 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." (Underscoring supplied)

Likewise, the refund of withholding taxes on treasury bills with value date August 6, 1991, September 30, 1991, November 20, 1991, December 2, 1991, May 20, 1992, and August 31, 1992 (Exhs. "E-3" and "E-6") is correspondingly denied for lack of any proof whatsoever to substantiate such particular claims.

In addition, confirmation of sale or purchase documents submitted not conforming to the value dates of treasury bills listed in the schedule and certification of treasury bills sold by PNB to the petitioner as contained in Annexes "G" to "K" of the amended petition or Exhibits "E-1" to "E-6" are excluded. They do not support the *factum probandum* sought to be established by the petitioner.

As to the rest of the claims, this Court finds them to be evidenced by appropriate documents which consist of all or any of the following: confirmations of sale and confirmation of purchase; trading orders in the name of petitioner; PNB bank statements on the debit/credit entries of petitioner's savings and current accounts; and a certification with schedule of the *Bangko Sentral ng Pilipinas* that shows PNB having purchased treasury [illegible] on various dates from its Government [illegible] Department and that final taxes thereon were [illegible] remitted to the BIR (Exhs. "K-1" to "K-8-b", inclusive of submarkings).

What can therefore be granted to the petitioner are the following:

Value Date	Confirmation of Sale (CS) or Confirmation of Purchase (CP)	WITHHOLDING TAX	Exhibit
20-Mar-91	CS121964	P 497,524.38	K-9-q
25-Jun-91	CP23524	(189,944.34)	K-9-4
18-Sep-91	CS144212	291,251.51	K-9-sss
18-Sep-91	CS144213	2,799,247.72	K-9-ttt
20-Sep-91	CS144214	1,048.51	K-9-s
30-Sep-91	CS144936	285,379.36	K-9-aa
16-Oct-91	CS147547	691,542.40	K-9-uuu
18-Oct-91	CS147546	5,329.46	K-9-t
08-Nov-91	CS150151	142,414.86	K-9-u
14-Nov-91	CS151773	650,044.71	K-9-v
14-Nov-91	CS151714	1,936.39	K-9-w
14-Nov-91	CS151770	153,693.98	K-9-yyy
21-Nov-91	CS153160	128,272.32	K-9-x
21-Nov-91	CS153159	17,735.98	K-9-y
29-Nov-91	CS154276	26,188.16	K-9-vvv
29-Nov-91	CS154275	3,273,519.65	K-9-xxx
02-Dec-91	CS154274	5,440.11	K-9-z
17-Dec-91	CS157163	5,994.64	K-9-bb
6-Jan-92	Trading Order A53906	169.87	K-12-ppp
15-Jan-92	CS160298	867,104.45	K-9-cc
20-Jan-92	CS160965	578,337.04	K-9-www
20-Jan-92	CS160967	3,378.39	K-9-dd
29-Jan-92	CS162295	7,973.87	K-9-ee
30-Jan-92	CS162634	5,315.91	K-9-ff
13-Feb-92	CS164848	415,264.55	K-9-gg
13-Feb-92	CS164843	P 346,053.79	K-9-hh
19-Feb-92	CS165376	3,870.04	K-9-ii
06-Mar-92	CS167049	188,147.14	K-9-jj
06-Mar-92	CS167047	331,596.33	K-9-kk
06-Mar-92	CS167050	1,031,700.76	K-9-ll
18-Mar-92	CS168577	1,468,510.06	K-9-nn
18-Mar-92	[illegible]S168576	2,075,286.84	K-9-mm
25-Mar-92	CS169107	58,922.37	K-9-pp
24-Apr-92	CS172555	114,164.77	K-9-qq

Value Date	Confirmation of Sale (CS) or Confirmation of Purchase (CP)	WITHHOLDING TAX	Exhibit
29-Apr-92	CS172925	88,183.43	K-9-rr
29-Apr-92	CS173006	9,422.09	K-9-ss
06-May-92	CS173828	315,203.71	K-9-tt
06-May-92	CS173829	3,068.35	K-9-uu
20-May-92	CS175939	683.52	K-9-vv
03-Jun-92	CS177442	3,680,653.42	K-9-ww
03-Jun-92	CS177453	20,691.12	K-9-yy
25-Jun-92	CS180543	163,180.71	K-9-zz
25-Jun-92	CS180544	163,180.71	K-9-aaa
25-Jun-92	CS180542	636,182.10	K-9-bbb
25-Jun-92	CS180541	3,669,006.99	K-9-ddd
21-Aug-92	CS186833	177,947.49	K-9-ppp
21-Aug-92	CS186835	337,659.79	K-9-fff
21-Aug-92	CS186834	1,491,111.03	K-9-qqq
26-Aug-92	CS187447	87,018.50	K-9-hhh
26-Aug-92	CS187917	107,305.55	K-9-rrr
26-Aug-92	CS187918	9,150.75	K-9-iii
31-Aug-92	CP28102	(358,258.25)	K-9-oo
31-Aug-92	CP28104	(2,575,705.41)	K-9-xx
31-Aug-92	CP28052	(121,479.85)	K-9-ccc
31-Aug-92	CP28101	(2,390,343.38)	K-9-eee
31-Aug-92		(166,506.28)	
31-Aug-92	CP28051	(327,315.55)	K-9-ggg
02-Sep-92	CS188129	2,603.59	K-9-jjj
02-Sep-92	CS188131	176,125.50	K-9-kkk
02-Sep-92	CS188130	115,936.53	K-9-lll
02-Sep-92	CS188672	5,819.80	K-9-mmm
16-Sep-92	CS190641	229,536.31	K-9-nnn
16-Sep-92	CS190623	162,872.79	K-9-ooo
		P21,995,350.84	

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 (**Insular Lumber Co. vs. CTA, 104 SCRA 721 and CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549**).

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby directed to **REFUND** in favor of petitioner the amount of P21,995,350.84 representing erroneously withheld final (20%) tax for the years 1991 to 1992.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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