REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ACCRA LAW PROVIDENT PLAN, represented by TEODORO D. REGALA, ROGELIO A. VINLUAN, and VICTOR P. LAZATIN, as Trustees and Members of the Provident Plan Committee,
Petitioner,

-versus - C.T.A. CASE NO. 4219

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/23/93

D E C I S I O N

This is a claim for refund involving alleged erroneously withheld final tax of 15% on income derived by Petitioner from its investments of the funds in savings and time deposits, money market placements and in securities for taxable years 1985 and 1986 in the amount of P126,049.34 and P168,926.57, respectively.

Petitioner ACCRA Law Provident Plan is an employee retirement and benefit plan created on July 2, 1973 for the benefits of all eligible personnel of the Angara Abello Concepcion Regala & Cruz Law Offices. The Plan was registered with the Bureau of Internal Revenue under Republic Act No. 4917, as implemented by Revenue Regulations No. 1-68 on August 31, 1973. The trustees, Teodoro D. Regala, Rogelio Vinluan and Victor Lazatin, were duly appointed as such in accordance with the Plan to hold, manage, invest and reinvest the assets of the fund.

For the calendar years 1985 and 1986, the trustees invested the assets of the fund in savings and time deposits, money market placements and in securities with various financial and banking institutions from which it derived income of P840,331.96 and P3,168,535.18, respectively. However, the said institutions allegedly withheld erroneously the 15% final tax provided under Section 21(d), now Section 21(c), in relation to Section 53(d)(1), now Section 51(a) of the National Internal Revenue Code in the amount of P126,049.34 and P168,926.57, respectively, for the years 1985 and 1986. Petitioner alleged that the withholding tax was erroneous because the Plan is exempted from tax pursuant to Republic Act No.

4917 amd Section 56(b), now Section 54(b) of the National Internal Revenue Code, as amended. Petitioner cited the previous decision of this court in GCL Retirement Plan vs. Commissioner of Internal Revenue (CTA Case No. 3888, December 16, 1986) holding that a trust fund created pursuant to an approved and qualified employee retirement or benefit plan is exempt from income tax. Hence, on December 29, 1987 and February 19, 1988, Petitioner filed separate written claims for refund in the total amount of P294,975.91. Immediately, as the two-year period for claiming a refund is about to expire, Petitioner instituted the Petition for Review on December 29, 1987 and amended the same on February 26, 1988.

Respondent for his part alleged that the claim for refund should be denied for failure of the Petitioner to state when the tax sought to be refunded was paid. The amount claimed to have been withheld must be shown to have been paid or remitted to the government. There is no legal basis for the tax exemption because Presidential Decree No. 1959 which took effect on October 15, 1984, withdrew the exemption from withholding tax on interest from bank deposits and yield from deposit substitutes. The decision of this court on "GCL Retirement Plan" is still pending review by the Supreme Court.

Take note that the issue on the legality of the tax exempt statue of the retirement plan previously raised by Respondent as a major objection was not raised anymore in his memorandum dated November 26, 1992 as an issue presumably in view of the affirmation by the Supreme Court of the decision of this court in the "GCL Retirement Plan" under G.R. No. 95022 promulgated on March 23, 1992. Hence, the remaining issues raised before this court are as follows:

(1) Whether or not Petitioner has sufficiently proven the payment and remittance of the taxes allegedly withheld and subject of this claim;

(2) Whether or not claim for refund of taxes allegedly withheld during the first, second and third quarters of 1985 is barred by prescription.

The pertinent law applicable is Section 52 (now Section 51) of the NIRC, as amended:

SEC. 52. *Returns and payment of taxes withheld at source.* - (a) *Quarterly returns and payment of taxes withheld.* - Taxes deducted and withheld under Section fifty-three (now 51) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

(c) *Statement of income payments made and taxes withheld.* - Every withholding agent required to deduct and withhold taxes under Section fifty-three (now 51) shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld

> therefrom simultaneously upon payment at the request of the payee, but not later than 20th day following the close of the quarter in the case of corporate payee or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes the statement should be given to the payee on or before January 31 of the succeeding year.
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> (d) *Annual returns.* - Every withholding agent required to deduct and withhold taxes under Section fifty-three (now 51) shall submit to the Commissioner of Internal Revenue a reconciliation statement of quarterly payments and list of payees and income payments. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. This return, if made and filed in accordance with regulations approved by the Secretary of Finance, shall be sufficient compliance with the requirements of Section fifty-seven (now 71) of this Title in respect to the income payments.
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> The Commissioner may, by regulations, grant to any withholding agent a reasonable extension of time to furnish and submit the return required in this subsection. (Underscoring supplied.)

In the first issue of whether or not Petitioner has sufficiently established or proven the claim for refund, this court believes that Petitioner failed to prove its claim as required by law.

The records show that the evidences presented by Petitioner consist mainly of savings passbook, certificates of participation, confirmations of sale, bank advices, confirmations of investments and receipts showing principally the amount of investments, interest earned and the withholding tax charged either in printed or handwritten notes in the instrument of investments itself. In some instances, the computations of interest and withholding tax are contained only in adding machine tapes. These evidences tend to prove that in fact there were investments done by the Trustees, interests were correspondingly earned and in the case of savings passbooks, wihholding taxes were charged but in case of the other commercial papers, withholding taxes were merely shown to have been computed. No other evidences documentary or testimonial were presented to corroborate the fact of withholding and more so, the fact of payment and remittance of those withholding taxes to the BIR. The testimony of

Ms. Carina R. Fangonil merely identified the existence of the above documents but never as to their contents. Moreover, the withholding agents or their representative who issued the aforementioned instruments can very well testify as to their contents but were never presented. Petitioner encountered difficulties in proving the fact of withholding, payment and remittance of the withholding taxes simply because it failed to observe the requirements laid down by the law itself.

The aforequoted provisions of law require the following positive action on the part of the withholding agent:

(1) The filing of a quarterly return with the BIR to contain the final withholding taxes;

(2) To furnish the recipient statement of income payments and taxes withheld simultaneously upon payment at the request of the payee, or on or before January 31 of the succeeding year;

(3) The filing of an annual return with the BIR containing the reconciliation of

quarterly payments, list of payees and income payments. This return shall be filed on or before January 31 of the succeeding year.

The above requirements are mandatory obligations on the part of the withholding agent. While it may be argued that the above obligations pertain to the withholding agent, nevertheless, the taxpayer pursuant to Section 52(c) may demand that it be furnished a written statement of income payments made and taxes withheld. This one is a statutory obligation of the withholding agent to the taxpayer. To this requirement, the Petitioner failed to comply. Not a single statement from the withholding agent was presented during the hearing. Furtheremore, not one return, quarterly or final, even a photocopy was either presented to support the fact of payment or remittance. As a client, Petitioner could secure photocopies of the returns from the withholding agent.

On the second issue, pursuant to Section 292 (now Sec. 230) in relation to Section 295 (now Section 204) of the Tax Code, recovery of tax erroneously or illegally collected must be done within two years from the date of payment of the tax in question by filing a timely claim for refund with the Commissioner of Internal Revenue and instituting a suit or proceeding in court within the same period of time. In the case of final withholding tax as in the instant case pursuant to Section 52(a) (now Section 51) of the National Internal Revenue Code, the filing of the return and the payment of the corresponding taxes withheld should be made within 25 days from he close of each calendar quarter.

The records show that the Petitioner filed its claim for refund and the instant Petition for Review on December 29, 1987 covering its 1985 claim. Inasmuch as the payment of withholding taxes has to be done on a quarterly basis, only the claim for refund of Petitioner for the period starting the last quarter of 1985 remains valid and subsisting. Hence, all claims involving withholding of taxes from November 1984 to September 30, 1985 shown in the bank passbooks and other commercial papers have already prescribed. The amount need not be stated in view of the first finding of this court that Petitioner failed to prove its claimable amount as required by law. As correctly cited by the Respondent, the case of Bank of the Philippine Islands, et al. vs. Commissioner of Internal Revenue, C.T.A. Case No. 4217, October 22, 1992 is a similar case very much applicable to the instant case.

WHEREFORE, in view of the foregoing, the herein claim for refund is denied and the instant petition for review dismissed.

SO ORDERED.

Quezon City, Metro Manila, September 23, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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