REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY,
as Trustee of Various Retirement
Funds,
Petitioner,

- versus -

C.T.A. CASE NO. 5292

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
SEP 11 1998

x - x

DECISION

This is a judicial claim for the refund of final taxes on interest income alleged to have been erroneously and/or illegally withheld and collected from the income derived by various retirement/provident funds ("funds" for brevity) during the year 1993 in the total amount of ₱6,049,971.83.

Petitioner is a commercial banking corporation organized and existing under Philippine laws and is engaged in trust and investment functions. As such, it is authorized to act as trustee of the funds set up by various companies in accordance with their respective retirement benefit plan, each of which has been approved to have met the requirements of a reasonable plan pursuant to Republic Act No. 4917 as implemented by Revenue Regulations No. 1-68. The funds were established in order to provide for the retirement, death, disability and separation benefits of the members of the plan.

Hereunder is the list of the various funds or plans with established funds involved in the case at bar, to wit:

a) Filipinas Synthetic Fiber Corporation Employees Retirement Plan;
b) Mercury Group of Companies Provident Fund;
c) Xavier School Employees Retirement Plan;
d) Asian Institute of Management Employees Provident Fund;
e) Consolidated Industrial Gases, Inc., Employees Retirement Plan;
f) Semirara Coal Corporation Employees Retirement Plan;
g) Toyo Menka Kaisha Ltd., Manila Branch Employees Retirement Plan;
h) Sea Commercial Co., Inc. Employees Retirement Plan;
i) AG & P Retirement Plan;
j) La Suerte Cigar and Cigarette Factory Employees Retirement Plan;
k) PNOC Group of Companies Employees Retirement Plan;
l) SGV and Company Provident Fund;
m) Universal Textile Mills, Inc., Retirement Plan;
n) Mitsui & Co., Ltd. Gratuity Plan;
o) Phil. Geothermal, Inc. Employees Plan;
p) AFIA and Affiliated Companies (CIGNA) Retirement Plan;
q) Rikio Southeast Asia, Inc. Employees Retirement Plan;
r) Philippine Carpet Manufacturing Corp. Retirement Plan; and
s) Colgate Palmolive Phils., Inc. Employees Provident Fund.

During the period from January to December, 1993, petitioner alleges that it invested assets of the funds and correspondingly earned interest income in money market placements, bank deposits, other deposit substitute instruments and government securities. It is further alleged that the total final withholding tax on interest income for said year amounted to ₱6,049.971.83.

On several dates, namely, May 12, 1993, August 16, 1993, January 31, 1994 and April 29, 1994, petitioner filed its written claim for refund with respondent's Bureau for the first, second, third and fourth taxable quarters of 1993, respectively, on the ground that employees' trust are exempt from income tax following the ruling laid down in **Commissioner of Internal Revenue vs. Honorable Court of Appeals, et. al., G.R. No. 95022, March 23, 1992, 207 SCRA 487**.

Petitioner reveals that on April 28, 1995, it allegedly instituted the present judicial action by filing a supplemental petition in CTA Case No. 4848 which has identical parties and nature of claim, except for the period involved, as the present action, by seeking to include and recover therein the amount of taxes involved in the case at bar on the ground that the same constitutes a continuation of the taxes so withheld in CTA Case No. 4848.

The admission of the supplemental petition, however, was denied by this Court in a Resolution, dated August 25, 1995, for the reason that it would cause further delay in the proceedings therein and that petitioner's original claim for refund would be enlarged, thereby in effect changing its cause of action.

417

In the same resolution, petitioner was reminded that if it so desires, it may file a separate petition for review for its intended claim for refund for the period January to December, 1993. Thus, on October 9, 1995, petitioner decided to file the instant petition for review.

At bar, petitioner reasserts its stance *a quo*. On the other hand, respondent contends, *inter alia*, the following special and affirmative defenses, to wit:

> x-x-x x-x-x x-x-x
>
> 6. The instant action has already prescribed;
>
> 7. The alleged tax withheld must be shown to have been paid and remitted to the respondent's Bureau and the best evidence of payments and remittances are the Official Receipts;
>
> 8. Presidential Decree No. 1959 which took effect on October 15, 1984 withdrew the exemption from withholding tax on interest income from bank deposits and yield from deposit substitutes and money market placements earned by petitioner during the year under review (Rev. Regs. No.. 17-84 dated October 12, 1984; Revenue Circular No. 31-84 dated October 30, 1984);
>
> x-x-x x-x-x x-x-x
>
> 11. Presidential Decree No. 1959 which took effect on October 15, 1984 remained to be in full force and effect until at present thus, repealing or amending the provisions/benefits relied upon by the petitioner in R.[A.] No. 4917 which was enacted earlier than, and hence inconsistent with, the former;
>
> 12. Moreover, even granting without admitting that R.A. 4917 is still in effect,

> the exemption under said law applies only to retirement benefits received by officials and employees of private firms in accordance with the private benefit plan maintained by the employer duly approved by and registered with respondent's Bureau of Internal Revenue. The tax exemption does not extend its applicability to the income of the retirement/trust fund from its bank deposits and yield from deposit substitutes;
>
> x-x-x x-x-x x-x-x
>
> 15. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31, SCRA 95 (1970); Manila Electric Co. vs. CIR, 57 SCRA 35 (1975);
>
> 16. It is incumbent upon petitioner to show full compliance with the provisions of Section 230 of the Tax Code;
>
> x-x-x x-x-x x-x-x

The ensuing trial proceedings centered almost entirely on the presentation of evidence for the petitioner. Respondent disputed the fact of whether the written claims for refund adduced in evidence by the petitioner were indeed duly filed as they contain on their faces, no stamp of receipt by her Bureau. The matter was cleared, however, when petitioner submitted copies of such written claims with the stamp of receipt duly imprinted thereon.

The issues confronting this Court are the following, to wit:

> 1. Whether or not petitioner is legally entitled to its claim for refund under Republic Act No. 4917; and

419

> 2. Whether or not the instant claims for refund have not prescribed;
>
> 3. Whether or not petitioner has substantiated with factual proof its claim for refund.

After a careful review of the attending facts, the disquisition of the parties and the law and jurisprudence in point, this Court rules in favor of the petitioner.

Anent the first issue, this Court notes that the same is not a case of first impression. Petitioner is correct in its adherence to the clear pronouncement of the Supreme Court way back in 1992 in the above cited case of **Commissioner of Internal Revenue vs. The Court of Appeals, The Court of Tax Appeals and GCL Retirement Plan, 207 SCRA 487 at page 496**, wherein it was succinctly held, to wit:

> 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 and 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' 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.

Being similarly situated, there is no dispute that the income of the trust funds involved herein is exempt from the payment of final withholding taxes.

Aleo

On the second issue, this Court finds that the claims for refund for the first, second and third quarters of 1993 as well as from October 1 to 8 of the same year have all prescribed for having been filed only on October 9, 1995 and are therefore, clearly beyond the two-year prescriptive period for filing a judicial claim for refund from the date of payment of tax, as provided in Section 230 of the Tax Code.

As regards the third issue, this Court is convinced that the evidence of the petitioner for the remaining portion of the claim for the fourth quarter of 1993 is insufficient to establish the fact that the money or assets of the funds were indeed used or placed in money market placements, bank deposits, other deposit substitute instruments and government securities, more particularly treasury bills.

To prove its case, petitioner merely submitted copies of the following documents, namely:

		Exhibit
1.	List of the various funds	A
2.	Schedule of taxes withheld on a quarterly basis in 1993	B
3.	Written claims for refund	C - C4 D - D4 E - E4 F - F4
4.	BIR Rulings on the various Retirement Plans at bar	G - Y

461

5. Trust agreements of the various Retirement Plans — Z - RR

6. Certifications of the Accounting Department of petitioner, Citibank, and *Bangko Sentral ng Pilipinas* on the taxes they respectively withheld — SS - UU49, inclusive

It is to be noted from the above listed exhibits that documentary proof of transactions, such as confirmation receipts and purchase orders which would ordinarily show the fact of purchase of treasury bills or money market placements by the various funds, together with their individual bank account numbers, were not submitted in evidence by the petitioner. They represent the best evidence on the participation of the funds and without them, there is no way for this Court to verify the actual involvement of the funds in the alleged investment in treasury bills and money market placements.

This Court could not possibly rely also on the aforementioned certifications of Citibank, *Bangko Sentral ng Pilipinas* and petitioner's own Accounting Department. The aggregate amount of final withholding taxes they attest to as having been remitted to respondent's Bureau in 1993 totals more than ₱40,000,000.00 (Exhibits SS, TT and UU) while the instant claims only total ₱6,049,971.83.

It can be logically surmised thus that from such a big figure, final withholding taxes from non-tax exempt

462

or otherwise, taxable transactions were conglomerated with herein alleged amount of refundable final withholding taxes.

On account of this mix-up, petitioner should have exerted diligent efforts to prove the portion of the amount of final withholding taxes being claimed in the case at bar from the rest of the bulk of the final withholding taxes that are really taxable transactions. Sad to say, however, petitioner failed to measure up on this important task.

Moreover, petitioner should be reminded that a certification represents nothing unless duly accompanied and supported by documentary evidence.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to prescription and insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

463

CERTIFICATION

I hereby certify that the above 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

464