REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,***	**C.T.A. EB NO. 452** **(C.T.A. CASE NO. 6765)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
METROPOLITAN BANK AND TRUST COMPANY, ***Respondent.***	**Promulgated:** JUL 29 2009 Apolinario 10:45 a.m.

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner") under *Section 11 of RA 9282,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse and set aside the Amended Decision dated October 2, 2008 and Resolution dated December 17, 2008 rendered by the First Division of this Court in C.T.A. Case No. 6765, entitled, "Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue", the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, petitioner's 'Motion for Reconsideration' and 'Supplemental Motion For Reconsideration' are hereby **PARTIALLY GRANTED** and this Court's Decision promulgated on August 13, 2007 in the instant case is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P1,559,253.27, representing the overpayment of the final tax on interest income for October 2001.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, the motion of respondent is hereby DENIED for utter lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), with the authority, among others, to decide, approve and grant tax credit and/or refund, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Metropolitan Bank and Trust Company (hereafter "Metrobank"), on the other hand, is a universal banking corporation duly organized and existing under the laws of the Philippines, with principal address at Metrobank Plaza Building, Sen. Gil. J. Puyat Avenue Extension, Makati City.

THE FACTS

The antecedent facts, as summarized by the First Division of this Court, are hereunder adopted, to wit:

> "On June 5, 1997, Solidbank Corporation (together with other local and foreign banks) forged an Omnibus Agreement with Luzon Hydro Corporation (LHC) wherein the former extended a foreign currency denominated loan with principal amount of US$123,780,000.00 to the latter. Under the agreement, LHC will shoulder all corresponding internal revenue taxes required by law to be deducted or withheld on loan. On September 1, 2000, petitioner became the successor-in-interest of Solidbank Corporation.
>
> On the following dates, LHC made the following payments to petitioner (now respondent) (principal and interest) and the Bureau of Internal Revenue (final tax on interest income):

	Principal	Interest	Final Tax Paid To BIR	Peso Equivalent of Final Tax
March 2, 2001	US$902,545.47	US$635,576.70	US$63,106.40	P3,060,029.24
October 31,2001	US$902,545.45	US$430,722.86	US$43,072.29	P2,236,743.81

Oål

> Petitioner (now respondent), however, allegedly remitted to the Bureau of Internal Revenue (BIR) the same final withholding taxes when it included the foreign currency denominated interest income in its Monthly Remittance Returns of Final Income Taxes Withheld for the corresponding months. Thus, petitioner (now respondent) filed an administrative claim for refund of the two amounts with the BIR on December 27, 2002 and a "Petition for Review" with this Court on September 10, 2003.
>
> On August 13, 2007, the Court promulgated the Decision wherein it denied the petition on grounds of prescription (on petitioner's claim for refund of the amount of P3,060,029.24 for March 2, 2001) and insufficiency of evidence (on petitioner's claim for refund of the amount of P2,236,743.81 for October 31, 2001). Evidence was insufficient because the Court cannot verify whether or not the subject claim for refund of P2,236,743.81 was included in the amount of P1,569,842,417.00; the amount not subjected by petitioner (now respondent) to the 10% final tax and deducted as "Exempt/tax paid income/income wherein counterparty shoulders the related tax" from its gross onshore income."

On September 7, 2007, Metrobank filed a "Motion For Reconsideration" of the Decision dated August 13, 2007.

On November 14, 2007, the First Division issued a Resolution affirming its denial of the P3,060,029.24 claim for March 2001 on the ground of prescription. However, as regards the claim of P2,236,743.81 for the month of October 2001; in the interest of substantial justice, the

First Division allowed the re-opening of the case to give Metrobank opportunity to present additional evidence.

On November 19, 2007, Metrobank filed a "Supplemental Motion For Reconsideration".

On December 7, 2007, Metrobank filed a "Petition for Partial Review" as regards the ruling of the First Division denying Metrobank's claim for the month of March 2001 on the ground of prescription. On April 21, 2008, the Court *En Banc* rendered its Decision dismissing Metrobank's Petition for Partial Review and affirming the Resolution dated November 14, 2007 in so far as it ruled that Metrobank's claim for refund of 10% final withholding tax for the month of March 2001 amounting to P3,060,029.24 had already prescribed.

Upon "Motion For Reconsideration" filed on September 7, 2007 by Metrobank, and "Supplemental Motion For Reconsideration" filed on November 19, 2007, on October 2, 2008, the First Division rendered an Amended Decision partially granting Metrobank's "Motion For Reconsideration" and "Supplemental Motion For Reconsideration". Accordingly, the CIR was ordered to refund or in the alternative, to issue

ccl

a tax credit certificate in favor of Metrobank in the reduced amount of P1,559,253.27, representing the overpayment of the final tax on interest income for October 2001.

On October 17, 2008, CIR filed a "Motion for Partial Reconsideration", to which Metrobank filed its "Comment/Opposition" on November 17, 2008.

On December 17, 2008, the First Division denied CIR's "Motion For Partial Reconsideration" for lack of merit.

On February 2, 2009, petitioner CIR filed the instant Petition For Review before this *Court En Banc*, raising the sole issue of:

ISSUE

> WHETHER OR NOT THE HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION AND SUPPLEMENTAL MOTION FOR RECONSIDERATION THUS GRANTING ITS CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P1,559,253.27 ALLEGEDLY REPRESENTING OVERPAYMENT OF THE FINAL TAX ON INTEREST INCOME FOR OCTOBER 2001.

Without necessarily giving due course to the Petition for Review, on February 18, 2009, We ordered respondent bank to file its comment,

Qw

not a motion to dismiss, within ten (10) days from notice. Despite notice, respondent bank failed to do so.

On March 18, 2009, the Court *En Banc* issued a Resolution ordering both parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the petition shall be deemed submitted for decision.

On March 23, 2009, Metrobank filed a "Motion for Reconsideration" of the Resolution dated March 18, 2009 and prayed that it be allowed to file its comment to the Petition for Review on or before April 5, 2009

On March 30, 2009, Metrobank filed a "Motion to Admit Comment".

On April 17, 2009, the Court *En Banc* ordered petitioner CIR to comment on Metrobank's "Motion To Admit Comment". Despite notice, petitioner CIR failed to comply. Thus, respondent Metrobank's "Comment" is hereby admitted.

On April 17, 2009, petitioner CIR filed his Memorandum, while respondent Metrobank filed its Memorandum on April 27, 2009. Thus, the instant petition is now deemed submitted for decision.

Petitioner CIR's Arguments

Petitioner argues that respondent bank did not present sufficient proof to explain the discrepancies in the amount of interest income paid by Luzon Hydro Corporation (LHC) and the amount it reported in its schedule of breakdown of interest; that there are inconsistencies in the evidence presented by respondent, particularly the difference between the figure reflected as its interest earned from LHC in the amount of US$936,358.58 *(Exhibits "S" and "S-1-a")* vis-à-vis the amount of US$1,061,786.84 in its pleadings, and the total amounts, reflected as interest payments made by LHC, evidenced by Metrobank's Debit Ticket Nos. 5511264 and 0169653 *(Exhibits "K" and "L")*; that the amount of P2,236,743.81 being claimed as refund, cannot be determined with certainty whether or not it forms part of the P1,569,842,417.00, the amount that respondent did not subject to the 10% Final Tax.

Respondent Metrobank's Counter-arguments

Respondent counters that in the Omnibus Agreement with LHC, the latter agreed to shoulder all the corresponding internal revenue taxes required by law to be deducted or withheld on the said foreign currency transactions and the filing of the appropriate tax returns and remittance of the taxes withheld to the BIR; that pursuant to said agreement, on March and October 2001, LHC remitted to petitioner the total amount of P5,296,773.05 (US$106,178.69) (broken down as P3,060,029.24 [$63,106.40] for March 2001, and P2,236,743.81 [$43,072.29] for October 2001), representing the 10% final tax on LHC's interest payments to respondent bank; that said amounts were included in the Monthly Remittance Returns of Final Income Taxes Withheld filed by LHC and were paid as evidenced by the debit memos of the Philippine National Bank debiting the account of LHC for payment of the same.

Respondent further alleges that it made the same payment of the same final tax on the interest income, which it earned from LHC for the months of March and October 2001 by including said final tax in its "Monthly Remittance Returns of Final Taxes Withheld" it submitted and

OP

paid to petitioner through electronic payment; thus respondent made a double payment of the same final tax and is entitled to a refund; that it presented sufficient evidence to support its claim such as, the Schedule of Tax Exempt/Tax Paid Onshore Interest Income for the year ended December 31, 2001, Schedule of Onshore and Offshore Interest Income for the year ended December 31, 2001, Schedule of Loans and Discount FCDU/EFCDU-Onshore, Reconciliation of Interest Earned vs. Interest Collected *(Annexes "H", "I", "J", "K" and "L", Metrobank's Motion For Partial Reconsideration dated October 17, 2008)*.

THE COURT *EN BANC'S* RULING

The petition is without merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issue raised by petitioner is a mere rehash of his Motion for Partial Reconsideration filed in C.T.A. Case No. 6765 and presents no new matters, which have not been considered and passed upon by the First Division in the assailed Amended Decision dated October 2, 2008 and Resolution dated

OW

December 17, 2008. However, for purposes of further elucidating the matters raised by petitioner, the Court *En Banc* shall discuss the same.

Records show that LHC made the following payments to Metrobank:

Date	Principal Amount	Interest	Exhibit
March 2, 2001	US$902,545.47	US$635,576.70	"K"
October 31, 2001	US$902,545.45	US$430,722.86	"L"

and remitted the corresponding 10% final tax to the BIR in the amount of US$63,106.40 or (P3,060,029.24) for March 2001, and US$43,072.29 or (P2,236,743.81) for October 2001, as shown in its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) *(Exhibits "B" to "D", and "E" to "G", respectively).*

Notwithstanding said payment of the 10% final tax by LHC, Metrobank alleges that it paid and remitted to the BIR, the same 10% final withholding taxes on the interest payments made by LHC for its foreign currency denominated loans for the month of March 2001 on April 25, 2001 and for the month of October 2001 on November 12, 2001, as shown in its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) *(Exhibits "H" to "H-1-a", and "I" to "I-5",* *respectively)*. As a consequence thereof, Metrobank filed an administrative claim for refund of the two amounts before the BIR on December 27, 2002, and a "Petition for Review" with this Court on September 10, 2003.

In its Decision dated August 13, 2007, the First Division denied Metrobank's claim for refund for the month of March 2001 in the amount of P3,060,029.29 due to prescription, which denial was affirmed by the Court *En Banc* in C.T.A. EB No. 340, the "Petition for Partial Review" filed by Metrobank.

As to the remaining claim for refund for the month of October 2001 in the amount of P2,236,743.81, the same was originally denied by the First Division in its Decision dated August 13, 2007 due to insufficiency of evidence. The First Division ruled that the evidence was insufficient because the Court cannot verify whether or not the subject claim for refund of P2,236,743.81 (for the month of October 2001) was included in the amount of P1,569,842,417.00, the amount not subjected by petitioner to the 10% final tax and deducted as "Exempt/tax paid income/income where counterparty shoulders the related tax" from its gross onshore income.

On September 7, 2007, Metrobank filed a "Motion For Reconsideration", and on November 19, 2007, a "Supplemental Motion For Reconsideration", which the First Division partially granted in its Amended Decision dated October 2, 2008. Accordingly, the Commissioner of Internal Revenue was ordered to refund or in the alternative, to issue a Tax Credit Certificate in favor of Metrobank in the reduced amount of P1,559,253.27, representing the overpayment of the final tax on interest income for October 2001, which is now the subject of the present petition.

After a careful examination of respondent Metrobank's evidence, the Court finds that respondent's claim for refund in the reduced amount of P1,559,253.27, representing the overpayment of the final tax on interest income for October 2001, was sufficiently substantiated.

Based on the evidence presented by Metrobank, it was proven that Metrobank paid to respondent the Final Tax on "interest and other income payments on foreign currency transactions/loans payable to FCDUs", which includes the interest income earned from LHC for the month of October 2001, as shown in its Monthly Remittance Returns of Final Income Taxes Withheld *(BIR Form No. 1601-F) (Exhibits "I" to "I-5")*.

A further scrutiny of the evidence presented by Metrobank shows that the amount of P1,559,253.27 granted by the First Division as a refundable amount to Metrobank for the month of October 2001 was not part of P1,569,842,417.00, the amount not subjected by Metrobank to the 10% final tax and deducted as "Exempt/Tax Paid Income/Income Where Counterparty Shoulders The Related Tax" from its gross onshore income.

A perusal of the Schedule of *"Tax Exempt/Tax Paid Onshore Interest Income"* for the year ended December 31, 2001 *(Exhibit "A", Motion for Reconsideration")*, shows that the same consists of the following:

Interest Income-Tax Exempt IBODI (ROP/BSP)	1,315,696,871.00
Interest Income-Deposit in Local Banks	39,600,398.54
Interest Income-Deposit in Foreign Banks	3,578,656.65
Interest Income-Due from Bangko Sentral ng Pilipinas (BSP)	123,070,202.44
Interest Income where Counterparty Withheld and Directly Remitted Related Tax	87,896,288.60
Total Tax Exempt/Paid Income	1,569,842,416.93

From the above schedule, as corroborated by Metrobank's witness, Jesus Pangan *(TSN, February 7, 2008, pp. 14-15)*, it is clear that the interest income received from LHC did not form part of "interest income-tax exempt IBODI (ROP/BSP)", as the interest income from LHC is not an

aue

interest income on investment, but interest income on a loan. Nor said interest income from LHC forms part of the "interest income – deposit in local banks", and "interest income deposit in foreign banks", as the interest income from LHC is not an interest income on deposit, but an interest income on a loan *(TSN, February 7, 2008, p. 16)*. More so, that the interest income received from LHC did not form part of the "interest income – due from Bangko Sentral ng Pilipinas (BSP)", because as heretofore stated, the interest income comprising this account was received from BSP, and not from LHC *(TSN, February 7, 2008, pp. 16-17)*.

Finally, the Court finds that the interest income received from LHC did not form part of the "interest income where counterparty withheld and directly remitted related tax", since the breakdown of said account shows that the same is comprised of the following:

Name of Company	Reference	Date Paid	Tax Base	10% Onshore
Philippine Long Distance Telephone, Co.	LBP East Ave.	12/10/2001	1,608,617.70	160,861.77
Philippine Long Distance Telephone, Co.	Citibank	11/12/2001	5,048,473.20	504,847.32
Philippine Long Distance Telephone, Co.	DBP-East Ave	4/25/2001	3,013,655.10	301,365.51
Philippine Long Distance Telephone, Co.	Citibank	3/26/2001	16,780,592.50	1,678,059.25

Op

Philippine Long Distance Telephone, Co.	LBP-East Ave	9/25/2001	13,052,331.00	1,305,233.10
Philippine Long Distance Telephone, Co.	Citibank	5/25/2001	7,597,442.90	759,744.29
Philippine Long Distance Telephone, Co.		6/25/2001	3,481,766.60	348,176.66
Citra Metro Manila Tollways Corp.		12/26/2001	37,313,409.60	3,731,340.96
		Total	87,896,288.60	8,789,628.86

(Exhibit "A", Motion for Reconsideration, and Exhibit "Q")

Instead, record shows that the interest income from LHC is part of the account "Loans and Discount-FCDU/EFCDU-Onshore" amounting to P1,481,268,339.72 *(Exhibit "B-2", Motion for Reconsideration)* of Metrobank's "Schedule of Onshore and Offshore Income For The Year Ended December 31, 2001" *(Exhibit "B", Motion for Reconsideration)*. As shown in its "Breakdown of Interest Earned, as of December 31, 2001", the interest income earned from LHC amounts to $936,358.58, or P48,400,375.00 *(Exhibits "D and D-1", Motion for Reconsideration)*. All the interests earned, as shown in the "Breakdown of Interest Earned, as of December 31, 2001", were subjected to 10% final tax, and the corresponding final taxes thereof were paid by Metrobank *(TSN, February 7, 2008, p. 31)*. Thus, the amount of P1,559,253.27 granted by the First Division to Metrobank, as an overpayment of its final tax on interest income for October 2001, was properly substantiated.

While it was established that Metrobank made the said payment and the basis for the remittance of the final tax is the amount of \$936,358.58 or P48,400,375.00, as reflected in the *Breakdown of Interest Earned as of December 31, 2001*, still the Court cannot determine with certainty which amount pertains to the remittances for March and October 2001.

Considering that the amount of \$635,576.70 pertains to the interest income on loan granted to LHC for the month of March 2001 *(Exhibit "K")*, such amount shall be deducted from \$936,358.58, while the remaining amount of \$300,781.88 or P15, 592,532.66 shall be the basis of respondent's refund of the final tax of ten percent (10%) for October 2001 remittance in the amount of P1,559,253.27.

As aptly ruled by the First Division:

> "However, this Court still maintains its observation in the Decision that there is a discrepancy of \$125,428.26 between the interest income of \$1,061,786.84 as alleged by petitioner in its pleadings and that contained in the "Loans and Discount–FCDU/EFCDU-Onshore" in the amount of \$936,358.58 (or P48,400,375.00). Considering that the basis

Qf

> for the remittance of the final tax is the latter amount of \$936,358.58 (or P48,400,375.00), and that petitioner failed to show how much of that amount pertains to the remittances for March and October, this Court is constrained to deduct the entire amount of \$635,576.70 pertaining to the March interest income on loan granted to LHC from the \$936,358.58. The remaining \$300,781.88 (or P15,592,532.66) shall become the basis of the refund of the final tax of ten percent (10%) for the October 2001 remittance. Thus, petitioner is entitled to the refund of the amount of P1,559,253.27, representing the final tax on interest income it overpaid for the month of October 2001."

Finding no reversible error, We affirm the assailed Amended Decision dated October 2, 2008 and Resolution dated December 17, 2008 rendered by the First Division of this Court.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice