REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 285
(C.T.A. Case No. 6652)

Members:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.:*

-versus-

PHILIPPINE NATIONAL BANK,
Respondent.

Promulgated:

OCT 0 1 2007 [signature]

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DECISION

CASTAÑEDA, JR., J.:

On appeal are the Decision dated January 30, 2007 and the Resolution dated May 30, 2007, both issued by the Court in Division in the case entitled, "Philippine National Bank vs. Commissioner of Internal Revenue" docketed as C.T.A. Case No. 6652.

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The facts are undisputed:

The Philippine National Bank ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal address located at PNB Financial Center, President Disodado Macapagal Boulevard, Pasay City. It is engaged in the commercial banking business.

The Commissioner of Internal Revenue ("respondent") is vested by law with the power to grant refund for any internal revenue tax erroneously paid, assessed or collected, among others, with office address at the Bureau of Internal Revenue Building, Agham Street, Diliman, Quezon City.

In several transactions including but not limited to the sale of real properties, lease and commissions, petitioner allegedly earned income and paid the corresponding income taxes due which were collected and remitted by various payors as withholding agents to the Bureau of Internal Revenue ("BIR") during the taxable year 2000.

On April 18, 2001, petitioner filed its tentative income tax return for taxable year 2000 which petitioner subsequently amended on July 25, 2001.

Seemingly unsatisfied with the first amendment, petitioner filed again an amended income tax return for taxable year 2000 on June 20, 2002, declaring no income tax liability (either at the regular rate of 32% or minimum corporate income tax rate of 2%) as it incurred a net loss in the amount of P11,318,957,602.00 and a gross loss of P745,713,454.00 from its Regular Banking Unit ("RBU") transactions. However, petitioner had a 10% final income tax liability of P210,364,280.00 on taxable income of P1,959,931,182.00 earned from its Foreign Currency Deposit Unit ("FCDU") transactions for the same year. Likewise, in the said return, petitioner reported a total amount of P245,888,507.00 final and creditable withholding taxes which was applied against the final income tax due of P210,364,280.00 leaving an overpayment of P35,524,227.00, as shown below:

	Special Rate	Regular Rate
Sales/Revenues/Receipts/Fees	P2,031,786,989.00	P 9,410,611,254.00
Less: Cost of Sales/Services	-	13,480,972,398.00
Gross Income from Operation	P2,031,786,989.00	(P 4,070,361,144.00)
Add: Non-Operating & Other Income	71,855,807.00	3,324,647,690.00
Total Gross Income	P1,959,931,182.00	P 745,713,454.00)
Less: Deductions	-	10,573,244,148.00
Taxable Income	P1,959,931,182.00	(P11,318,957,602.00)
Tax Rate	10%	32%
Income Tax	P 210,364,280.00	P -
Aggregate Income Tax Due	P 210,364,280.00	P -
Less: Tax		

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Credits/Payments		
Prior Year's Excess		
Credits	P	13,266,584.00
Tax Payments for the First Three Quarters		2,976,489.00
Creditable Tax Withheld for the First Three Quarters		216,455,877.00
Creditable Tax Withheld for the Fourth Quarter		13,189,557.00
Total Tax Credits/Payments		P 245,888,507.00
Overpayment		**P 35,524,227.00**

> In its second amended return, petitioner's income tax overpayment of P35,524,227.00 consisted of the balance of the prior year's (1999) excess credits of P9,057,492.00 to be carried-over as tax credit to the succeeding quarter/year and excess creditable withholding taxes for taxable year 2000 in the amount of P26,466,735.00 which petitioner opted to be refunded.
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> On November 11, 2002, petitioner, through its Vice President Ligaya R. Gagolingan, filed a claim for refund or the issuance of a tax credit certificate in the amount of P26,466,735.40 for the taxable year 2000 with the respondent.
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> Due to respondent's inaction on its administrative claim, petitioner appealed before this Court by way of a Petition for Review on April 11, 2003.[1]

In ruling for the Philippine National Bank ("PNB"), the Court in Division issued a Decision dated January 30, 2007 ordering the Commissioner of Internal Revenue ("Commissioner') to refund or issue a tax credit certificate in the amount of P23,762,347.83 representing unutilized excess creditable withholding taxes for taxable year 2000.[2]

Dissatisfied, the Commissioner questioned the Decision through a Motion for Partial Reconsideration which was denied for lack of merit by the Court in Division in a Resolution dated May 30, 2007. Hence, this Petition for Review filed by the Commissioner, now as the "petitioner" with

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[1] Rollo, pp. 25-28.
[2] Rollo, pp. 25-40.

the Court En Banc against PNB, now as the "respondent" ascribing the following errors committed by the Court in Division:

> A. Respondent failed to prove that the creditable withholding taxes amounting to P23,762,347.83 are duly supported by valid Certificates of Creditable Tax Withheld at Source.
>
> B. Respondent failed to prove actual remittance of the alleged withheld taxes to the Bureau of Internal Revenue (BIR).
>
> C. Respondent failed to discharge its burden of proving its entitlement to a refund.[3]

The grounds raised by the Commissioner shall be discussed in seriatim.

The Commissioner alleges that PNB failed to prove that the creditable withholding taxes of P23,762,347.83 are duly supported by valid certificates of creditable tax withheld ("CTW") at source. It should have presented as witnesses the withholding agents/payors who will testify on the validity of the contents of the CTW certificates. Even if the originals of these documents were offered in evidence, there is no presumption of their validity. The presumption of validity applies only to the assessments issued by the administrative body because the same is deemed to have been undertaken in accordance with law. Notably, PNB belatedly submitted the CTW certificates only before the Court in Division, and not

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3 Rollo, pp. 13-14.

earlier with the administrative body. Matters not interposed in the administrative level cannot be raised for the first time on appeal.

The Commissioner further argues that PNB likewise failed to show actual remittance of the alleged withheld taxes to the BIR. The fact of withholding is one thing; the fact of remittance is another. The presumption of regularity in the execution of documents does not apply to claims for refund because claims for refund are construed strictissimi juris against the taxpayer. Assuming for the sake of argument that PNB is entitled to a refund, the government is not duty bound to restore what was not originally received by mistake. Otherwise stated, the principle of solutio indebiti is inapplicable in the case at bar.

It is incumbent upon PNB to discharge the burden of proving entitlement to a refund by showing both the fact of withholding of taxes and subsequent remittance thereof to the BIR.

PNB illustrated that it will take at least 124 hearing dates to finish the identification and validation of all the 622 CWT certificates, if the substance of each document is testified by at least 5 payors/withholding agents on each hearing. The process of identifying each CWT certificates would certainly be tedious to the parties, especially the Court. Moreover, the proof of remittance is the responsibility of the various withholding agents as payors, and not PNB as the payee.

The Petition is devoid of merit.

The Commissioner's assertion that the entries in the CTW certificates primarily pertaining to PNB's income earning transactions, and the corresponding income taxes withheld from the same must be established by the testimonial evidence of various payors/withholding agents is untenable.

The fact of withholding is sufficiently established by a document known as CWT certificate, or specifically denominated as, "BIR Form 2307"[4] issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee which in this case is PNB, without the need of presenting the testimonial evidence of the person who made entries therein. The Supreme Court made this pronouncement in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[5] citing the case of *Far East Bank and Trust Company vs. Court of Appeals*[6] and holding that:

> In fine, the document which may be accepted as evidence of the third condition, that is the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
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> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 Revenue Regulations No. 6-85, BIR Form No.

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[4] Formerly BIR Form 1743-750.
[5] G.R. 155682, March 27, 2007.
[6] G.R. 129130, December 9, 2005, 477 SCRA 49.

> 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. <u>It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. (Underscoring Ours for emphasis).</u>[7]

The figures appearing in the CWT certificates should be taken at face value since these documents are executed under the penalties of perjury, pursuant to Section 267 of the 1997 NIRC, as amended, reading:

> SEC. 267. **Declaration under Penalties of Perjury. -**
> Any declaration, return, and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

The Commissioner is in no position to assail the authenticity of the CWT certificates due to PNB's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt.

In the same manner, proofs of actual remittance of income taxes withheld cannot be given any significant weight by this Court. Nowhere is it stated in the law or in any rules that any information concerning actual remittance is required in a claim for refund of excess creditable withholding taxes. To be entitled to a refund of unutilized creditable

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[7] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, supra.*

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withholding taxes, the following requirements must be satisfied, to wit: 1) the claim is filed with the Commissioner within the two year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[8]

Finally, the claimant must be able to prove that it did not opt to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years, in accordance with Section 76 of the 1997 NIRC, as amended which provides:

> SEC. 76. Final Adjustment Return. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (c) Be credited or refunded with the excess amount paid, as the case may be.
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.

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[8] See *Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. 146941, August 9, 2007, *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, *supra.*, and *Citibank, N.A. vs. Court of Appeals*, G.R. 107434, October 10, 1997, 280 SCRA 459.

Indubitably, a payee's claim for refund of unutilized creditable withholding taxes is not conditioned upon the existence of proof of actual remittance by the payor/withholding agent to the BIR.

We agree with PNB's contention that it need not establish the withholding and remittance of income taxes to the BIR because these functions are vested with the payors who are the agents of the Commissioner.[9]

There being no adequate grounds to overthrow PNB's arguments, the Court in Division's verdict granting the refundable excess creditable taxes withheld of P23,762,347.83 for taxable year 2000, in its favor, is sustained.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The Decision dated January 30, 2007 and the Resolution dated May 30, 2007 are **AFFIRMED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[9] *AB Capital & Investment Corporation vs. Commissioner of Internal Revenue*, CTA Case 6086, September 26, 2001.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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