REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANCO FILIPINO SAVINGS
AND MORTGAGE BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 4122

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 28 1995

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DECISION

This case originally involves a claim for refund in the amount of P2,501,263.07 representing excess creditable withholding taxes for the year 1984.

Petitioner is a banking corporation organized and existing under the laws of the Philippines and is authorized to engage in commercial banking by virtue of Monetary Board Resolution No. 223 dated February 14, 1963.

On January 25, 1985, the Monetary Board issued MB Resolution No. 75 ordering the closure of petitioner bank on the ground that "the continuance in business of the bank would involve probable loss to its depositors and creditors" based on the examination conducted by the Central Bank on the financial condition of the petitioner. The aforesaid resolution designated Mrs. Carlota Valenzuela, the deputy Governor of the Central Bank, as receiver. Later on, she was appointed as liquidator upon another resolution issued by the Monetary Board declaring petitioner bank as insolvent and ordering its liquidation.

It was during the process of liquidation and under the administration of the liquidator, that a claim for refund was filed by the petitioner bank on December 21, 1986 with the BIR in the amount of P2,501,263.07 covering the period 1984. The said claim for refund was based on an amended income tax return for 1984 filed by petitioner bank through its liquidator on December 22, 1986. This claim was hinged on the assertion that the 1984 income tax return reflected a net loss of P501,326,838.00 therefore the taxes withheld by the withholding agents from rentals of properties and interest from government securities in the amount of P2,501,263.07 is refundable. On December 24, 1986, the very same day the BIR received the claim for refund, petitioner filed a petition for review with this Court covering the same refundable amount.

In answer to the original petition, respondent proposed the following Special and Affirmative Defenses, thus:

5. Petitioner's claim for refund is pending investigation;

6. The petition states no cause of action as the petition for refund does not allege the date when the tax was paid (Manufacturer's Bank and Trust Co. as trustee for Gem Trust Plan vs. The Commissioner of Internal Revenue CTA CASE NO. 1659 November 29, 1965;

7. The mere averment that petitioner suffered a net loss of P501,326,838.00 during the year involved does not ipso facto merit a refund;

8. The amount of P2,501,263.07 alleged to have been withheld for 1984 was collected in accordance with law and regulations, hence, not refundable;

9. It is incumbent upon the petitioner to show compliance with the provisions of Sections 292 and 295 (now Sections 243 and 246) of the National Internal Revenue Code of 1977, as amended;

10. A claim for refund is construed strictly against claimants, since a claim for refund partakes of the nature of an exemption from taxation (Coll. of Int. Rev. vs. Ledesma, G.R. No. L-17509, 31 SCRA 95, January 30, 1970).

Several postponements caused by both parties slowed the pace of this case and it was during its pendency that the Supreme Court came out with a decision entitled Banco Filipino Savings and Mortgage Bank vs. Monetary Board, Central Bank of the Philippines dated December 11, 1991, 204 SCRA 767, declaring the closure of the petitioner Bank by the Central Bank as null and void as the closure was done in an arbitrary manner tantamount to a grave abuse of discretion. Portions of the Supreme Court decision are quoted hereunder:

> "While we recognize the actual closure of Banco Filipino and the consequent legal effects thereof on its operations, We cannot uphold the legality of its closure and thus, find the petitions in G.R. Nos. 70054, 7867 and 78894 impressed with merit. We hold that the closure and receivership of petitioner bank which was ordered by respondent Monetary Board on January 25, 1985, is null and void."

The aforecited Supreme Court decision changed the character of the instant petition primarily because it had the effect of stripping the liquidator's powers over the bank and reverting it to the legitimate bank officials. The bank officials now at the helm of the administration of the petitioner bank, abandoned the allegations found in the original petition filed with this Court on December 24, 1986 and claimed that this petition was based on a "spurious" return manufactured by the liquidator to make it appear that petitioner bank was insolvent. The bank officials denied that the petitioner bank incurred a net loss of P501,326,838.00 in 1984. In fact the bank officials claim that they have a taxable income in the amount of P59,776,226.00 with a total income tax due of P20,911,679 based on the ITR filed by them on April 15, 1985 (Exhibit "A"). The bank officials further alleged that they attempted to pay this amount less a tax credit of P2,498,736.00 by authorizing the

Bank of the Philippine Islands to pay BIR the amount of P18,412,943.00 (Exhibit "D") but this payment never materialized as they were prevented from doing so by the liquidator, Mrs. Carlota Valenzuela. The aforementioned new allegations adopted by the bank officials were contained in petitioner's memorandum filed on March 30, 1995 which provided a totally different theoretical approach to this case. In answer to the new allegations, respondent averred in her memorandum that petitioner has outstanding tax liabilities for 1984 in the amount of P108,469,253.25 representing deficiency income, withholding, expanded and business taxes covered by assessment notices all dated November 16, 1987. She further asserts that the existence of a deficiency assessment for the same year covered by the claim for refund serves to prevent the claim from being adjudicated in Court as enunciated by the Supreme Court in the case entitled Commissioner of Internal Revenue vs. Court of Appeals and Citytrust Banking Corporation, 234 SCRA 348 when it provided thus:

> "The grant of refund is founded on the assumption that the tax return is valid, that is the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable

evidence, cannot be the basis for the grant of the refund."

Respondent also stressed that petitioner did not file a claim for refund/tax credit with the Bureau of Internal Revenue in contravention of the provision of Section 230 of the Tax Code. The only evidence offered by the respondent is the letter sent to petitioner by the BIR informing the former of its delinquency income tax for 1984 in the amount of P20,838,010.00. (Exhibit "1")

The occurrence of a supervening event brought about by a Supreme Court decision substantially altered the character of the case as the petition is no longer spearheaded by the liquidator appointed by the Central Bank but by the bank officials whose powers were temporarily suspended during the closure of the bank. As a consequence, we are faced with the issue culled from the allegations contained in petitioner's memorandum and not those which are embodied in the petition for review filed with this Court on December 24, 1986. The issue posed for determination is whether or not petitioner bank is entitled to a tax credit of P2,604,753.23 representing excess creditable taxes withheld from petitioner during the taxable year of 1984.

Petitioner admits that it has unpaid taxes for the year 1984 in the amount of P20,911,679.00 based on the income tax return filed by its bank officials on April

15, 1985 (Exhibit "A"). The controversy lies in the amount of tax credit it is entitled to arising from the creditable taxes withheld from its income by the various withholding agents in 1984. The tax credit will serve to reduce the amount to be paid by the petitioner and it is their contention that the tax credit already recognized by respondent should be increased from P2,498,736.00 to P2,604,753.23 because additional certifications for creditable taxes withheld were gathered by the petitioner and these were formally offered in evidence.

The records of this case belie the claim of the petitioner.

In a letter dated June 14, 1985, the then Acting Commissioner of Internal Revenue, Ruben Ancheta issued a letter addressed to petitioner informing them of its delinquency income tax for the taxable year 1984 detailed as follows:

Gross revenue per return	P642,188,701.00
Less: Deductions/Tax free income	582,412,565.00
Net income per return	P 59,776,220.00
Income tax due thereon	P 20,911,679.00
Less: Tax credit	2,498,736.00
Delinquency income tax	P 18,412,943.00
Add: 10% Surcharge	1,841,294.30
20% Int. fr. 4/15/83-6/14/85	633,773.49
TOTAL AMOUNT DUE AND COLLECTIBLE	P 20,838,010.79

The delinquency income tax was based on the income tax return filed by the petitioner on April 15, 1985 which specifically reflected the amount of P2,498,736.00 as tax credit representing creditable taxes withheld in 1984 (see Exhibit "A", page 415, CTA records). This same amount was recognized by respondent when it issued the abovementioned letter as can be gleaned from the details aforecited so petitioner by its admission embodied in the income tax return cannot now allege that a different amount should be granted as tax credit. Section 2(a) of Rule 131 of the Rules of Court provides, thus:

> " Conclusive presumptions - the following are instances of conclusive presumptions:
>
> (a) whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it. "
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> xxx xxx xxx

In the case entitled Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993, this Court sets forth the rationale behind upholding the declarations made by the taxpayer in his income tax return over that of any allegations made by him that are inconsistent with the entries found therein, thus:

> " It is noteworthy to point at this juncture that the declarations made by the taxpayer in his income tax return are for all intents and purpose made in good faith and are true and

correct to the best of his knowledge and belief. In fact the VP-Treasurer and the Chairman/President, both representatives of the corporation signed under oath the income tax return of the corporation. Notice to the filer/taxpayer is printed just above the space provided for their signatures, to wit:

> "WE DECLARED UNDER THE PENALTIES OF PERJURY THAT THIS RETURN HAS BEEN MADE IN GOOD FAITH, VERIFIED BY US AND TO THE BEST OF OUR KNOWLEDGE AND BELIEF IS TRUE AND CORRECT PURSUANT TO THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND THE REGULATIONS ISSUED UNDER AUTHORITY THEREOF."

Sections 45(a) and 266 of the National Internal Revenue Code are clear on this matter. Thus, the law provides:

> "**Sec. 45. Corporation returns. — (a) Requirements.** — Every corporation, subject to the tax herein imposed, except foreign corporation not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.
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> "**Sec. 266. Declaration under penalties or 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."

WHEREFORE, in view of the foregoing, this Court denies petitioner's claim for refund/tax credit. The instant petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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