REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PACIFICO T. TORRES,
Petitioner,

- versus - C.T.A. CASE NO. 4595

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

3/23/92

D E C I S I O N

This case involves a claim for refund by petitioner in the total amount of P42,484.00 representing income tax withheld by respondent as accumulated unused vacation and sick leaves, as well as the excess withholding tax on salary of petitioner.

As gathered from the records of this case, it appears that petitioner Pacifico T. Torres was an employee of the Central Bank of the Philippines from August 16, 1954 up to September 30, 1988 wherein he retired upon reaching the compulsory retirement age of 65 years old. The said petitioner at the time of his retirement effective October 1, 1988, was occupying the position of

Assistant Director in the Legal Department of the Central Bank of the Philippines (Exh. "E", p. 50, CTA rec.).

During the period that said petitioner was employed in said government agency, he had accumulated unused vacation and sick leave credits with money value amounting to P186,117.97 at the time of his compulsory retirement (see Exh. B-1, p. 45, CTA rec.). From said leave credits, the amount of P41,084.75 was withheld in payment of income tax due against petitioner and remitted to the Bureau of Internal Revenue on January 10, 1989 (see Exh. "A", p. 42, CTA rec.).

On April 15, 1989, petitioner jointly with his wife filed his income tax return for 1988 (Exh. "B", p. 44, CTA rec.) showing that the total tax due the government is P14,034.00 as against the amount withheld by the government of P56,517.95. In said return therefore, petitioner is claiming the total refund of P42,484.00 (Exh. "B-3", p. 44, CTA rec.). This total amount includes the amount of P41,084.75 which refers to the tax withheld from the cash equivalent of petitioner's accumulated vacation and sick leaves (Exhs. "B-1" and "B-2", pp. 44-45, CTA rec.). However, petitioner's claim for refund as incorporated or shown in its income tax return file was not acted upon by respondent Commissioner. Thus, on November 6, 1992, petitioner filed a formal claim for refund of P41,084.75 which is equivalent to the cash value of petitioner's accumulated vacation and sick leaves including the amount of P1,399.25 representing excess tax withheld on salaries or a total amount of P42,484.00 before respondent Commissioner of Internal Revenue (Exh. "C", pp. 46 and 47, CTA rec.).

Through a letter dated February 14, 1991, respondent denied petitioner's claim for refund. This denial refers only to the amount of P1,399.25 and does not touch on petitioner's claim for refund on the P41,684.75 (Exh. "D", pp. 48-49, CTA rec.). As a result, petitioner on April 8, 1991 interposed his appeal to this Court.

The issues posed in this case are as follows:

1. Whether petitioner's terminal leave pay received upon retirement from the government service is subject to withholding tax; and if not,

2. Whether respondent Commissioner of Internal Revenue is liable to pay interest on the withheld tax on the money value of accumulated unused vacation and sick leave credits if found due to the petitioner.

As far as the first issue is concerned, this is no longer one of first impression. The Second Division of the Supreme Court in the case of **Commissioner of Internal Revenue v. The Court of Appeals and Efren Castaneda,** G.R. No. 96016 dated October 17, 1991 ruled as follows:

> "xxx xxx xxx
>
> The Court has already ruled that the <u>terminal leave pay received by a government official or employee is not subject to withholding (income) tax.</u> In the recent case of Jesus N. Borromeo v. The Hon. Civil Service Commission, et. al., G.R. No. 96032, 31 July 1991, the Court explained the rationale behind the employee's entitlement to an exemption from withholding (income) tax on his terminal leave pay as follows:
>
> > 'x x x commutation of leave credits, more commonly known as terminal leave, is applied for by an officer or employee who retires, resigns or is separated from the service through no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrimpy. A modest nest egg which the senior citizen may look forward to is thus avoided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits.'

> In fine, not being part of the gross salary or income of a government official or employee but a retirement benefit, terminal leave pay is not subject to income tax. (Underscoring supplied)
>
> xxx xxx xxx"

It is worth noting that in respondent's memorandum, he does not question the right of the petitioner to the refund of the amount claimed. Respondent notes only that petitioner lacks documentary evidence to support his claim for refund and warrant the granting of the same. The documents submitted by petitioner are alleged to be inadmissable, as they are not properly identified pursuant to Sec. 31, Rule 132 of the Rules of Court.

We find this contention without merit. During the hearing of this case on October 7, 1991, the Court admitted all of petitioner's documentary evidence at the time they were offered the same in open court, despite the vigorous objections of respondent counsel. Furthermore, it is worth noting that in the charter of this Court (Rep. Act No. 1125) particularly Section 8 of the said law, it provides that the proceeding before this Court is not governed strictly by the technical rules of evidence. The Rules of Court are merely suppletory, in the absence of specific rules that the Tax Court can be guided with. Considering that we have a specific provision on this matter in our charter, then the Court is bound by that rule in Section 8 of R.A. 1125 rather than by that provided in the Rules of Court.

As to the second issue, petitioner contends that respondent should be held liable for legal interest on the withheld tax or money value of his accumulated and unused vacation and sick leave credits alleging that respondent attended with arbitrariness, citing the cases of **Collector of Internal Revenue v. Antonio Prieto, et. al.**, G.R. No. L-11976, September 26, 1961, 3 SCRA 101; and **Commissioner of Internal Revenue v. Asturias Sugar Central, Inc.**, L-15013, August 31, 1961, 2 SCRA 1140. We find no arbitrariness in the action of respondent. The burden is on petitioner to prove his case. Respondent in pursuing his cause was merely performing his duties assigned by the law. Respondent's cause was guided by his honest belief that the amount withheld on terminal leave pay is considered as supplementary compensation paid to an employee for services performed and as such it is subject to the withholding tax on compensation (see par. 14, Answer under Special and Affirmative Defenses). Surely, respondent cannot be faulted for the delinquent performance of his duties. Hence, the court **DENIES** petitioner's claim for payment of legal interest against respondent.

WHEREFORE, petitioner claim for refund is hereby **GRANTED.** Respondent is hereby ordered to refund to the petitioner the amount of P42,484.00 without pronouncement of legal interest.

Without cost.

SO ORDERED.

Quezon City, Metro Manila, March 23, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
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 between 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