REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 6393

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 13 2004

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DECISION

This case involves a claim for refund or issuance of tax credit certificate in the amount of Eighty Million Five Hundred Fifty-Six Thousand Eight Hundred Fifty Nine Pesos and Sixty-Three Centavos (Php80,556,859.63) representing alleged unutilized creditable withholding taxes for the year 1999.

The antecedents, as gathered from the records of the instant case are as follows:

Petitioner, United Overseas Bank Philippines (UOB-Phils.), formerly known as Westmont Bank, is a corporation organized and existing under and by virtue of the laws of the Philippines and is authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in general banking activities (Joint Stipulation of Facts, pars. 1 & 2).

On October 19, 1999, United Overseas Bank Singapore (UOB–Singapore) and herein petitioner (then Westmont Bank) entered into a Subscription Agreement wherein the former acquired the majority

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shareholdings in Westmont Bank. Consequently, Westmont changed its name to United Overseas Bank Philippines (UOB–Philippines).

Afterwards, the Bangko Sentral ng Pilipinas (BSP), Philippine Deposit Insurance Corporation (PDIC), UOB–Philippines and UOB–Singapore entered into a "General Settlement Agreement" (GSA) in which BSP agreed to grant waivers and concessions to UOB–Philippines. PDIC likewise agreed to extend further financial assistance and concessions to UOB–Philippines *(Exhibit A)*.

Thereafter, UOB–Philippines and PDIC entered into a "Transfer Agreement" on November 26, 1999 in accordance with the said GSA. Under the terms of the said agreement, UOB–Philippines transferred to PDIC its non–performing loans, real properties classified as ordinary assets and other acquired assets in consideration of the purchase price of Php4.9 Billion *(Exhibit B)*.

Meanwhile, on November 25, 1999, petitioner entered into a contract of Absolute Sale with Harbor Holdings (Harbor) for a stipulated price of P228,558,599.92, wherein the former conveyed and assigned full ownership, title and/or interest to the latter certain parcels of land which have been foreclosed by UOB-Philippines but redeemed by its debtors.

On March 10, 2000, PDIC filed a Withholding Tax Remittance Return with the BIR in the total amount of Php66,292,047.97, inclusive of penalties pursuant to transfer of real properties under the foregoing Transfer Agreement *(Exhibit "D")*.

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Likewise, Harbor filed a Withholding Tax Remittance Return with the BIR the total amount Php18,292,654.65 in relation to the aforesaid sale on March 10, 2000 *(Exhibit "F")*.

On April 17, 2000, UOB – Phil. filed its Annual Corporate Income Tax Return for taxable year 1999 where it reported a net loss of Php2,207,170,919.00 *(Exhibit H)*. And on April 17, 2001, it filed its Annual Corporate Income Tax Return for taxable year 2000 where it also reported a net loss of Php943,754,696.00 *(Exhibit O)*.

On November 7, 2001 UOB – Phils. filed with the BIR a formal claim for refund in the amount of Php80,556,859.63 representing unutilized creditable withholding tax for taxable year 1999 (Joint Stipulation of Facts, par. 7). Without waiting for the decision of the Commissioner of Internal Revenue, it filed the instant petition on February 18, 2002.

Respondent Commissioner of Internal Revenue, by way of special and affirmative defenses averred that:

4. Petitioner's alleged claim fro refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P80,556,859.63 being claimed by the petitioner as alleged unutilized creditable withholding tax for taxable year 1999 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

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7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

To support its claim, the petitioner presented the following pertinent documents as exhibits:

Exhibit	**Description**
A	General Settlement Agreement
B	PDIC 4.9 Transfer Agreement
C	Deed of Absolute Sale (With Assignment of Contract Rights to Harbor Holdings)
D	Withholding Tax Remittance Return (BIR Form 1606) of PDIC
E	Land Bank O.R. of PDIC
F	Withholding Tax Remittance Return (BIR Form 1606) of Harbor Holdings
G	Annual Income Tax Return (TY 1999)
H	Annual Income Tax Return (TY 2000)

Petitioner also presented witnesses to further buttress its case. Respondent, for his part, submitted as sole evidence the memorandum dated November 22, 2002 and presented the Revenue officer who prepared the same. Thereafter, this case was submitted for decision upon the submission of the parties' memoranda.

The sole issue to be resolved in the instant case is whether or not Petitioner is entitled to the refund/tax credit certificate for the amount of Php 80,556,859.63 representing unutilized creditable withholding tax for taxable year 1999.

In Order for the petitioner to be entitled to the refund/issuance of tax credit certificate of the claimed unutilized creditable withholding taxes for the year 1999, it must comply with the following requirements, to wit:

1. That the claim is filed with the Commissioner of Internal Revenue within the two (2) year period from the date of payment of the tax (Section 229, NIRC);
2. It must not have opted to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years (Section 76, NIRC);
3. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and
4. The fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withhold therefrom (***Section 2.58.3(B) Revenue Regulations No. 2-98; Citybank N.A. vs. Court of Appeals, Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997; ACCRA Investments vs. Court of Appeals, 204 SCRA 957***).

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There is no dispute that the first requirement was duly complied with as the petition for review was seasonably filed. This case involved the taxable year 1999. Petitioner filed the administrative claim for refund on November 7, 2001 while the instant petition was filed on February 18, 2002 (Joint Stipulation of Facts, par. 7).

As to the second requisite, this is deemed complied with. Contrary to respondent's contention, there is no indication that petitioner opted to carry-over any excess income tax. Its 1999 income tax return (*Exhibit "H"*) does not reflect such option. Its income tax return for the succeeding year 2000 (*Exhibit "O"*) does not reflect any application of prior year's tax credit.

As regards the third requisite, petitioner admitted that it failed to declare in its 1999 Annual Income Tax Return *(Exhibit G)* the income corresponding to the taxes it seeks to refund. In its memorandum, petitioner explained that no income was realized on its sales of the properties to PDIC and Harbor. And so, petitioner pointed out that the ~~second~~ third requirement is deemed complied with because the properties were sold at their book values. Hence, neither gain nor loss was reported in its return. Further, it justified its non-declaration of income in its annual income tax return by citing Section 32(3) of the Tax Code wherein only the gains derived from dealings in property are included as part of the gross income for income tax purposes.

This is unsustainable.

Records show that the creditable income tax in the amount of P63,135,283.77 was withheld by PDIC on real property sold by petitioner as evidenced by the Withholding Tax Remittance Return-BIR Form No. 1606 (Exhibit D). If we are going to gross up the said tax, the value of the property would cost P1,262,705,675.40 (P63,135,283.77/5%). The latter amount was arrived at because the withholding tax on sale of real property, other than capital assets, of a corporation not habitually engaged in real estate business is 5% of gross selling price pursuant to Section 1(j)(iii) of Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 1-90, to wit:

> SECTION 1. Section 1 of Revenue Regulations No. 6-85 is hereby amended to read as follows:
>
> "Sec. 1. Income payments subject to creditable withholding tax and rates prescribed thereon. Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
>
> "(j) <u>Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of</u>
>
> xxx xxx xxx

It follows that the aforementioned amount should also be the cost or book value of the property sold.

In order to support that the property sold to PDIC was at its book value, petitioner presented the following documents:

1. Transfer Agreement (Exhibit B)
2. The total list of "ROPOA" accounts transferred to PDIC (Exhibit L)
3. Summary of accounting Entries (Exhibit I).

After a thorough examination of the documents presented by the petitioner to support its claim, we found that the values reflected in the exhibits were bigger than the supposed book value of the real property sold. We note that the amount reflected in the documents in the sum of P4,894,264,221.09 represents the total asset transferred by the petitioner to PDIC at their book value. However, for verification purposes, we need to check whether the real estate sold to PDIC (subject of the claim) formed part of the total amount transferred. On this point, the petitioner failed. Neither the records nor the documents show that petitioner itemized the assets transferred to PDIC and so, we cannot ascertain whether or not the real property sold to PDIC was at its book value.

In the same way, the basic creditable tax withheld on the sale of real property to Harbor amounts to P17,421,575.86, which, if grossed-up would result in the amount of P348,431,517.20 (P17,421,575.86/5%) as the value of the property sold. This would prove to be greater than the value of consideration in the amount of P228,558,599.92 as reflected from the Deed of Absolute Sale *(Exhibit C)*. Hence, the impression is that petitioner realized gain on the sale of such property.

Furthermore, petitioner failed to disclose the sale of the subject real properties in its 1999 annual income tax return under Schedule 1 Gain/Loss From Sales/Exchange of Real Properties of the Annual Information Form *(Exhibit G)*. This may possibly have served as an alternative way of proving that the real properties sold to PDIC and Harbor were at their book values.

Time and again this court has held that the income upon which the taxes were withheld at source should be included as part of the income declared in the income tax return of the recipient (***CCT Constructors Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5266, March 23, 1999***). Failure to prove that such income was included as part of the income declared in the income tax return is fatal to one's claim for tax refund.

In view of the foregoing, there is no need to discuss the fourth requirement.

It bears stressing once again that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption (***Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc., 309 SCRA 87***).

WHEREFORE, in view of the foregoing, the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

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

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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

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