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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERBANK EMPLOYEES' RETIREMENT PLAN represented by its Trustee, The International Corporate Bank - Trust Division,
Petitioner,

- versus -

C.T.A. CASE NO. 4881

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 30 1996

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DECISION

Presented before us is a petition for review filed by the International Corporate Bank - Trust and Investment Services Division, as trustee of the Interbank Employee's Retirement Plan, against the Commissioner of Internal Revenue for the refund of P1,823,207.78, representing 20% final taxes withheld from interest income earned by petitioner on its savings deposit and money market placements for the period covering 1989 to June 1992.

The facts are as follows:

On January 24, 1985, the Board of Directors of International Corporate Bank (Interbank) established the Interbank Employee's Retirement Plan (Interbank Plan), which was effectively implemented on June 1, 1995, in order to provide retirement pension and other benefits for its employees and the latter's heirs/beneficiaries in case of retirement or separation from the service (Exh. "C"). The Interbank Plan was later amended to take effect on December 1, 1986 (Exh. C).

On July 28, 1987, the Bureau of Internal Revenue declared through its Deputy Commissioner, Eufracio D. Santos, that the said Interbank Plan qualifies as a reasonable retirement benefit plan within the contemplation of Sec. 29(b)(7)(A) of the Tax Code and as such, shall be entitled to all benefits and privileges attached to it. However, the Deputy Commissioner opined that in view of the amendment of Sec. 21(c)(1) in relation to Sec. 51(a) of the Tax Code by E.O. No. 37 which took effect on August 1, 1986, the said retirement plan is subject to 20% final tax on interest and/or yield on deposit substitute instruments; and interest on its savings and time deposits paid or accrued beginning August 1, 1986 (Exh. A).

Between the period 1989 up to June 30, 1992, petitioner through its trustee (Interbank's Trust Division) invested its funds in government securities, in addition to its savings deposit accounts maintained with Interbank. These government securities were initially purchased by Interbank, as a purchasing agent, authorized to participate in the primary auction conducted by the Central Bank of the Philippines. Subsequently, these government securities were sold to the secondary market. A final tax of 20% was imposed and withheld from interest earned on these government securities purchased and on the savings deposit being maintained. In the case of the government securities, it is the Central Bank which directly withhold and remit the tax due to the Bureau of Internal Revenue. And, with respect to the interest on savings deposit, the same is withheld by the bank itself which maintain the account.

On April 15, 1991, Interbank's - Trust Division, as trustee of the various retirement funds, filed a letter-request for refund totalling P2,571,875.65, representing 20% final taxes withheld from the income of various tax exempt funds held in trust (Exh. D). This was followed up by series of requests for refund, summarized as follows:

Date filed with the BIR	Period Covered	Refund Claimed Interbank Plan	Exhs.
12/5/91 (Revised)	1/1/89 to 9/30/91	P 1,537,010.91	E & E-2
8/21/92	10/1/91 to 6/30/92	286,196.87	F, F-1 to F-7
		P 1,823,207.78	

In summary, Interbank claims for the refund of the following amounts in the name of petitioner: (Exhs. E, E-2, F, F-2 to F-7, inclusive)

	1989	1990	Jan. - Sept. '91	Oct. - Dec.'91	Jan.- June '92	TOTAL
CB/Bills	0.00	0.00	1,878.63	29,444.66	2,948.75	34,272.04
Savings	2,074.26	3,246.58	814.68	446.56	1,388.18	7,970.26
T/Bills	433,104.51	718,213.91	377,678.34	80,080.92	171,887.80	1,780,965.48
TOTAL	435,178.77	721,460.49	380,371.65	109,972.14	176,224.73	1,823,207.78

All these requests for refund are anchored on the exemption of the retirement funds from income tax under R.A. No. 4917 in relation to Sec. 53(b) of the Tax Code.

Due to the inaction of respondent on its requests, herein petitioner filed on November 27, 1992 this petition so as not to barred its right to judicially claim for the refund of P1,823,207.78 under Sec. 230 of the Tax Code.

Respondent, in response, denied the material allegations of the petition and, by way of special and affirmative defenses, contended that the petition states no cause of action because it did not specify when the taxes withheld were paid and remitted to the government; that the tax exemption privilege of petitioner had been withdrawn by virtue of P.D. No. 1959; and the taxes withheld are presumed to have been collected in accordance with law. Moreover, claims for refund are strictly construed against the claimant.

Petitioner formally offered the following documentary and testimonial evidence:

1. The letter-reply of the Bureau of Internal Revenue, dated July 28, 1987, stating that Interbank Plan qualifies as a reasonable retirement plan within the contemplation of R.A. No. 4917 and Sec. 29(b)(7)(A) of the Tax Code (Exh. A);

2. The Trust Agreement, dated June 10, 1985, between Interbank and Interbank Trust and Investment Services Division (Exh. B);

3. The Interbank Retirement Plan Rules and Regulations (As Amended Effective Dec. 1, 1986) [Exh. C];

4. Letters requesting for refund, dated April 15, 1991 (Exh. D), December 3, 1991 (Exh. E), and August 20, 1992 (Exh. F) addressed to the respondent filed by Interbank's-Trust Division, in behalf of its trustor (herein petitioner), Interbank Employees' Plan;

5. Certification, dated September 11, 1992, issued by Interbank's Manager, stating that the amount of P7,970.26, was withheld as final taxes on the savings account of Interbank Retirement Fund (under Trust Account No. 1-008-85) for the period 1989 to June 1992 (Exh. G) and another certification, dated November 24, 1992, issued by Interbank's Manager Placements Department, stating that the amount of P3,124,631.37 was withheld as final taxes on Treasury Bills and Central Bank Bills purchased for the period 1989 to May 27, 1992;

6. Photocopies of Confirmation of Sales from February 24, 1988 to May 27, 1992 (Exhs. I, I-1 to I-127, inclusive);

7. Certifications, dated January 12, 1989 (Exhs. J, J-1 to J-3, inclusive), February 27, 1990 (Exhs. K, K-1 to K-3, inclusive), April 8, 1991 (Exhs. L, L-1 to L-

10, inclusive) and February 20, 1992 (Exhs. M and M-9), issued by the Central Bank of the Philippines, stating that through the regular auction system, Interbank purchased from the Government Securities Department of the Central Bank, Treasury Bills indicated in the accompanying Schedules, and that the corresponding final taxes were withheld and remitted to the BIR;

8. Certification, dated September 8, 1992 (Exh. N-1), stating that the final and creditable taxes withheld at source from interests and discounts on taxable government securities for the period January 1989 to July 1992 were remitted to the Treasurer of the Philippines for the account of the Bureau of Internal Revenue, duly supported by Monthly Remittance Returns of Income Taxes Withheld;

9. Photocopies of the Monthly Remittance Returns of Income Taxes Withheld by the Central bank for the period January 1988 to July 1992 (Exhs. N-2 to N-56, inclusive);

10. Photocopies of the Quarterly Returns of Taxes Withheld on Interest Paid on Time and Savings Deposits for the First Quarter of 1989 up to the Second Quarter of

1992, including their corresponding Payment Orders and Confirmation Receipts (Exhs. O to Y-2, inclusive); and

11. Photocopies of the Quarterly Returns of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/etc. for the Third Quarter of 1991, together with its Payment Order and Confirmation Receipts (Exhs. Z, Z-1 and Z-2); Fourth Quarter of 1991 (Exh. AA); its Annual Return of Final Income Taxes Withheld on Interest Paid on Deposit Substitutes/Trusts/etc. for the year 1991 (Exh. BB); as well as the First and Second Quarters of 1992 (Exhs. CC and DD).

Respondent interposed no objection to the admission of petitioner's evidence. When it was respondent's turn to present her evidence, her counsel manifested that he will just submit this case for decision on the basis of the pleadings sans the filing of a memorandum.

The sole issue presented to Us is whether or not petitioner is entitled to the refund of the final taxes withheld on interest income earned by petitioner from savings deposit accounts and purchases of government securities for the period January 1, 1989 until June 30, 1992 in the sum of P1,823,207.78.

In the leading case of **Commissioner of Internal Revenue v. The Hon. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, respresented by its Trustee-Director, G.R. No. 95022, March 23, 1992, 207 SCRA 487**, the Supreme Court stated that:

> "To begin with, it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Rep. Act No. 4917 approved on 17 June 1967. This law specifically provided:
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> > 'SECTION 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;' x x x (emphasis ours).
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> In so far as employees' trust are concerned, the foregoing provision should be taken in relation to then Sec. 56(b) (now Sec. 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, supra, which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and repeated hereunder for emphasis:

> 'Sec. 56. *Imposition of Tax.* - (a) *Application of Tax* - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust,
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> xxx xxx xxx.
>
> (b) *Exception.* - The tax imposed by this Title shall not apply to employees' trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees xxx.'

The tax exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs from the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trust for tax exemption."

Based on the foregoing ruling, there is no doubt that an employees' trust is tax exempt. However, this Court considers not only questions of law but also determines questions of fact. It is the duty of the Court to positively determine whether petitioner has fully established the factual elements of its case.

The Tax Code provisions on final withholding taxes pertinent to this case are quoted hereunder:

"SEC. 50. <u>Withholding of tax at source.</u> (a) *<u>Withholding of final tax on certain incomes.</u>* - The tax imposed or prescribed by Sections 21(c), 21(d)(2); 22(a)(2), (b), (c), (d), (e); 24(e)(1), (e)(2)(B), (e)(3); and 25(a)(4), (a)(5), (a)(6)(A), (a)(6)(B), (a)(6)(C)(ii), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5)(A), (b)(5)(B), (b)(5)(C)(ii) of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 51 of the National Internal Revenue Code, as amended."

"SEC. 51. <u>Returns and payment of taxes withheld at source</u>.- (a) *<u>Quarterly returns and payment of taxes withheld</u>*. - Taxes deducted and withheld under Section 50 shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. <u>The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter</u>, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of month following the close of the quarter during which withholding was made." (As amended by B.P. Blg. 41.) [Underscoring supplied])

Section 5 of Revenue Regulations No. 17-84 (October 12, 1984), implemented the above-mentioned provision, to wit:

> "SEC. 5. Manner of Filing Return and Payment of Taxes. - The taxes herein deducted and withheld shall be paid upon filing a return, in duplicate, with the Revenue District Officer or the Collection Agent of the city or duly authorized treasurer of the municipality where the withholding agent's principal office is located and where its books of accounts are kept except in cases where the Commissioner of Internal Revenue allows otherwise. The required return shall be filed within twenty-five (25) days after the end of each quarter of any calendar year." (Emphasis ours.)

This was subsequently amended by Rev. Regs. No. 23-84 (effective January 1, 1985), calling for the remittance of taxes withheld by the banks within 10 days after the end of each month. Rev. Regs. No. 23-84 was later amended by Rev. Regs. No. 3-85 (March 1, 1985, effective beginning the second quarter of calendar year 1985), restoring the original period of 25 days after the end of each quarter to file the required return. Section 2 of Rev. Regs. No. 3-85 reads as follows:

> "Section 2. Manner of filing returns and payment of taxes. - The provisions of Section 5 of Revenue Regulations No. 17-84 on the manner of filing returns and paying the taxes withheld which was amended by Revenue

Regulations No. 23-84 is hereby restored and shall read as follows:

> SECTION 5. <u>Manner of filing returns and payment of taxes.</u> - The taxes herein deducted and withheld shall be declared in a return which shall be filed in duplicate within <u>twenty-five (25) days after the end of each quarter of any calendar year</u> with the Revenue District Officer of Collection Agent or duly authorized Treasurer of the city or municipality where the withholding agent's principal office is located and where its books of accounts are kept except in cases where the Commissioner of Internal Revenue otherwise allows. Upon filing of the return payment of the taxes shall be made to accredited banks, or, in places where there are no such banks, to the Collection Agent or authorized Municipal Treasurer."

It is clear from the foregoing that the return and remittance of the corresponding final taxes withheld on income derived from bank deposits and yield from deposit substitutes should be filed within twenty-five (25) days from the close of each calendar quarter.

The two-year prescriptive period to file a claim for refund commences to run from the date of payment of the tax (Sec. 230 NIRC). Considering that the final withholding tax on interest on bank deposits and yield on deposit substitutes is to be remitted or paid on the 25th day following the end of each quarter then the tax withheld is deemed paid on the 25th day following the end of the quarter (**Bank of the Philippine Islands as Trustee of the PAL Pilots Retirement Benefit Plan vs. Commissioner of Internal Revenue, CTA Case No. 4217, October 22, 1992**; Supreme Court resolution denying petition for review on certiorari has become final and executory on January 10, 1994).

The records show that the petition was filed on November 27, 1992, therefore all claims for refund for 1989 and the first, second and third quarters of 1990 have prescribed. With respect to the fourth quarter of 1990 and the year 1991 up to June 1992, petitioner failed to establish that the payment was for and in behalf of the payee.

From the evidence presented by petitioner, it was established that the Confirmation of Sales merely prove the fact that Interbank purchased Treasury Bills and Central Bank Bills from the Central Bank through its regular auction system and that the taxes accruing therefrom were properly withheld and remitted. The sales of these bills made by Interbank's Treasury Unit to its Trust Division were made without any qualification, i.e., there is no indication whatsoever in the Confirmation of Sales (Exhs. I to I-127, inclusive) that the placements were for the account of a specific retirement plan, more particularly that of petitioner. This is amplified by the fact that, based on the testimony of petitioner's witness, Leonor Avena, Pro-Manager of Interbank, it is only through the debit advice receipt will you know under whose account the investment will be debited. Unfortunately, these debit advice receipts were not presented by the petitioner.

The Confirmation of Sale presented to Us only showed the basis for recording the different investments in the tracing orders (TSN, July 16, 1993 Hearing, pp. 12-13). An attempt to trace the money market placements from the Confirmation of Sales documents, identifying the securities stated thereon, to the Schedules presented by the Central Bank was an exercise in futility because the Schedules merely showed the dates of issue, maturity date, face amount, interest earned, tax withheld, and credit advice issued to the BIR. The said Schedules merely proved the purchase of the Treasury Bills in blocks and the accrued taxes due thereon were duly withheld and remitted by the Central Bank.

Furthermore, we have also noted the following discrepancies in the Schedules, to wit:

	INTERBANK'S SCHEDULE		CB'S SCHEDULE	
Exhs.	Issue Date	Maturity Date	Issue Date	Maturity Date
I-95	12-19-90	6-12-91	No record	
I-96	12-26-90	6-26-91	12-26-90	12-25-91
I-97	2-06-91	5-10-91	No record	
I-98	3-06-91	8-28-91	No record	
I-99	3-27-91	4-26-91	3-27-91	6-26-91
I-104	5-02-91	10-30-91	No record	
I-110	7-31-91	10-23-91	7-31-91	1-27-92
I-111	8-12-91	-do-	No record	
I-113	8-21-91	11-27-91	No record	
I-114	10-22-91	11-25 91	No record	
I-116	10-24-91	1-07-92	No record	
I-123	1-01-92	12-30-92	No record	
I-124	12-18-91	12-16-92	No record	
I-125	1-29-92	7-29-92	No record	
I-126	2-26-92	8-26-92	No record	
I-127	5-27-92	8-26-92	No record	

We can only deduce from the foregoing that if the sales were made to the Trust Division, it does not follow that such sales were for a particular trust fund. The sales could be for the account of any individual and or corporations aside from other retirement plans which are not tax exempt. This is manifested by the fact that the securities which the Trust Division acquired from the Treasury Division of Interbank does not coincide nor can they be traced from the originating transaction, i.e. from the Central Bank records where Interbank acquired the securities as a purchasing agent authorized to participate in a primary auction.

Considering, therefore, the circumstances presented to us, we are of the opinion that the Confirmation of Sales and other supporting documents (Schedules) related thereon, are not sufficient to prove that the investments were intended for the Interbank Retirement Fund. We will just be relying on the good faith of the petitioner if we will believe as gospel truth the contents of the Schedules of investments in government securities prepared by its employees. Such a situation is unacceptable. Court decisions are based on uncontrovertible evidences on record and not in good faith or speculation or unsupported assumptions. **(Bank of the Philippine Islands as Trustees of various Retirement Funds vs. Commissioner of Internal Revenue, CTA Case Nos. 4898, 4900 to 4940, Oct. 11, 1995).**

Time and again, it has been ruled in a litany of decisions that a refund of taxes partakes the nature of a tax exemption and are to be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. **(Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation and the**

Court of Tax Appeals, G.R. No. 66838, December 2, 1991, 204 SCRA 377; Associated Sugar Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2944, May 6, 1994, citing the case of Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. L-31057, May 29, 1981, and Commissioner of Internal Revenue vs. Court of Tax Appeals and Insular Lumber Company, G.R. No. L-31137, May 29, 1981, 104 SCRA 710; and Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549; Bank of the Philippine Islands as Trustees of various Retirement Funds vs. Commissioner of Internal Revenue, supra.)

WHEREFORE, in view of insufficiency of evidence necessary to support the claim for refund filed by the petitioner, the instant petition for review is hereby DENIED for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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