REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4985

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 03 1995

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DECISION

This is a suit filed on May 7, 1993 for the recovery of the withholding tax on dividends in the amount of P60,000.00 alleged to have been erroneously paid to respondent on May 10, 1991.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines and is a duly licensed stockbroker authorized to buy and sell stocks in the Manila Stock Exchange.

On December 17, 1992, petitioner filed a claim for refund with the respondent in the amount of P60,000.00 representing withholding tax on the cash dividends paid to one of its clients, First Philippine Investment Trust (FPIT), a non-resident corporation domiciled in Hongkong. This claim for refund is anchored on the proposition that there was a double payment of withholding taxes on the cash dividends remitted and paid to FPIT and because of this the payment made by the petitioner to the BIR must be returned or applied as a tax credit in its favor.

The petition contains the allegation that one of its clients, First Philippine Investment Trust (FPIT) acquired shares of stock of Metro Drug, Inc. through a street stock arrangement with the petitioner, and in 1991, Metro Drug, Inc. remitted and paid the BIR the 15% withholding tax imposed by law on the dividends it paid to FPIT. Similarly, petitioner alleges that it also withheld 15% withholding tax on the same cash dividends through an erroneous accounting entry resulting in the double payment of withholding taxes.

The claim for refund filed with BIR was not acted upon thus this case was elevated to this Court in a petition for review.

Respondent in her Answer, proposed the following Special and Affirmative Defenses:

> 7. In an action for refund of taxes, the burden of proof is upon the taxpayer to prove that the taxes paid or remitted were erroneously or illegally collected. Failure to sustain said burden is fatal to the action for refund;
>
> 8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 23 of the Tax Code regarding the prescriptive period within which to file claims for refund;

9. Petitioner has not shown that the tax sought to be refunded in accordance with the National Internal Revenue Code;

10. Petitioner, who has the burden of proving that it is entitled to tax refund, has failed to establish that the tax subject to its claim for refund was erroneously or illegally collected;

11. The claim for tax refund, being in the nature of an exemption from taxation, must be construed strictly against petitioner (Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710 [1981]);

In addition to the abovementioned defenses, respondent, in her memorandum, attempts to block the claim for refund by asserting that petitioner is not the real party in interest to claim for refund of withholding taxes primarily because when it remitted the amount as withholding tax it did not act as a withholding agent as it was not obliged to withhold and remit the tax on said dividend.

The issue presented to Us for resolution is whether or not petitioner is entitled to the refund of P60,000.00 representing alleged erroneously paid withholding tax on cash dividend paid in 1991.

To bolster its claim, petitioner, among others, submitted the following documents as evidence:

1) Exhibit "A" - Certification dated September 9, 1991 signed by M.A. Roy, the group treasurer of Metro Drug, Inc., to prove that Metro Group of Companies paid and

remitted to the BIR the withholding tax on the cash dividends paid to FPIT.

2) Exhibit "A-1" - BIR P.O. No. C10594572 in the sum of P1,030,967.92 issued to Metro Drug, Inc., to prove that Metro Drug, Inc. paid withholding taxes to the BIR.

3) Exhibit "A-2" - Central Bank Confirmation receipt issued to Metro Drug, Inc. for the same purpose as Exhibit "A-1".

4) Exhibit "A-3" - Monthly Remittance Return of Income Taxes withheld for April 1991 to prove that Metro Drug, Inc. as withholding agent filed with RDO 32 East Makati the monthly return for its withholding of tax on cash dividends.

5) Exhibit "B" - BIR P.O. No. 10939483 in the sum of P61,875.00 in the name of petitioner to prove that petitioner mistakenly paid again the withholding tax due on the cash dividends received by FPIT.

6) Exhibit "B-1" - Central Bank Confirmation Receipt in the sum of P61,875.00 in petitioner's name for the same purpose as Exhibit "B".

7) Exhibit "B-2" - Monthly Remittance Return filed by petitioner for same purpose as Exhibit "B".

Respondent, on the other hand, opted not to present any evidence and failed to submit the BIR records notwithstanding the subpoena duces tecum issued by this Court requiring its presentation.

A close examination of the records of this case shows that petitioner's claim for refund rests on a sound legal basis.

There is no dispute as to the occurrence of a double payment of withholding taxes on a single taxable transaction made by Metro Drug, Inc. and thereafter by petitioner. Central Bank Confirmation Receipt No. B21273169 (Exhibit "A-2") showed that Metro Drug, Inc. paid the amount of P1,030,967.92 to the BIR inclusive of the taxes it withheld from the dividends it remitted to FPIT. It is also evident that petitioner subsequently remitted to the BIR the amount of P61,875.00 representing the taxes it withheld from the same dividends paid to FPIT as shown by Central Bank Confirmation Receipt No. B22760380 dated May 10, 1991. Moreover, respondent in her memorandum admitted the fact that petitioner paid the BIR an amount representing the taxes it mistakenly paid to the BIR when she stated, thus:

> When petitioner remitted the amount of P60,000.00 allegedly as withholding tax on the cash dividend of First Philippine Investment Trust, it did not act as withholding agent because under the law it was not obliged to withhold and remit the tax on said cash dividend. (see page 85, CTA records)

From the facts thus presented, there exists no doubt that petitioner, by mistake, paid the tax that has already been previously paid by the withholding agent resulting in the double recovery of taxes on the part of the BIR. This situation creates a quasi-contract relationship between petitioner and respondent more particularly categorized as a case of "solutio in debiti" governed by Article 2154 of the Civil Code of the Philippines which provides as follows:

> **Article 2154.** If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

The law and the facts are clear. Respondent, in receiving two payments pertaining to a single taxable transaction when the law imposes merely a single taxable amount to be paid by the proper withholding agent, is obliged to return what was erroneously paid pursuant to the aforecited Article 2154 of the Civil Code. Fair deal is expected by our taxpayers from the BIR and the duty demands that BIR should refund without any unreasonable delay what it has erroneously collected. **(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals,** G.R. No. 68252, May 26, 1995)

The defense of the respondent that refund is not proper because petitioner is not the real party in interest to claim the amount is a reflection of her failure to see the situation in the context of a quasi-contract. It was petitioner who wrongfully paid the taxes when it had no obligation to do so and it was the BIR who received such payment in excess of that required by law. Seen in this light, it is the petitioner who is the real-party-in-interest to claim the refund of the erroneous payment. Section 2 of Rule 3 of the Rules of Court provides the following:

> SEC. 2. *Parties in interest.* - Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy or the subject thereof adverse to the plaintiff, or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendants. (Taken from Sec. 2, Rule 2, old Rules of Court and from Sec. 114 of Act No. 190)

The Supreme Court, in the case entitled **University of the Philippines, Board of Regents vs. Ligot-Telan,** 227 SCRA 342 elaborated on the meaning of a real party in interest in the following manner, thus:

> A real party in interest is one "who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit." "Interest" within the meaning of the rule means material interest, an interest

in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest" (**University of the Philippines, Board of Regents vs. Ligot-Telan,** 227 SCRA 342).

The above-quoted definition is an apt description of the petitioner in the instant case as it will eventually stand to be "benefited or injured by the judgment" depending on the outcome of this case.

WHEREFORE, in view of the foregoing, petitioner's claim for refund in the amount of P60,000.00 representing the erroneous payment of the 15% withholding tax on cash dividends is **GRANTED.** Respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P60,000.00.

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 Consitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals