REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN MIGUEL CORPORATION Retirement and Death Benefit Plan - Local Personnel, represented by its Trustees,

Petitioner,

- versus -

C.T.A. CASE NO. 4624

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:
SEP 03 1996

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SAN MIGUEL CORPORATION Retirement and Death Benefit Plan - Foreign Personnel, represented by its Trustees,

Petitioner,

- versus -

C.T.A. CASE NO. 4625

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:
SEP 03 1996

x - x

DECISION

Cases at bar refer to consolidated claims for refund, involving the amounts of P1,602,109.69 in C.T.A. Case No. 4624 and P49,865.33 in C.T.A. Case No. 4625, as alleged erroneous payments of 20% withholding taxes, on yields from money market placements and interests on bank deposits for the period June 1, 1989 to March 31, 1991.

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Petitioners (Local Plan and Foreign Plan, for brevity) are both employees' trusts which form part of a pension plan set up by their employer San Miguel Corporation (SMC, for short), to provide retirement, pension, disability and death benefits to their employees. Each plan is wholly financed by SMC, through yearly contributions to the Fund, to be invested with the end in view that the income and principal of the said yearly contributions would be sufficient to finance the guaranteed liability of SMC under the Plan.

The Fund is controlled, managed and administered by a Board of Trustees, pursuant to a Trust Agreement, for the payment of definite amounts and the grant of certain facilities to the employees when disabled, separated, retired or upon death subject to the conditions set forth in the Plan. The administrative and clerical functions of the Board of Trustees are handled and performed by the Retirement and Death Benefit Plan Department of SMC.

Both Local and Foreign Plans were submitted, approved and qualified as exempt from income tax by respondent, pursuant to Republic Act 4917.

From June 1, 1989 to March 31, 1991, petitioner Local Plan made investments in money market placements and on savings account deposits. Respondent's withholding agents, pursuant to P.D. 1959, withheld and

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remitted to the Bureau of Internal Revenue the 20% withholding tax due on the yields of said investments in the total sum of P1,602,109.69.

For the same period, petitioner Foreign Plan made investments in money market placements, and yields of said investments were similarly imposed 20% withholding tax in the amount of P49,865.33, which amount was remitted to the B.I.R. by the latter's withholding agents.

Claiming they were exempt from payment of income tax, petitioner filed with the B.I.R. separate claims for refund in the amounts of P1,602,109.69 and P49,865.33.

Separate Petitions for Review were also filed with this Court on June 27, 1991.

As the cases at bar involve the same parties and identical issues, counsel for both petitioners requested a consolidated trial for both cases (Motion to Consolidate Trial, pp. 96-97, CTA records). Without any objection on the part of respondent's counsel, motion of petitioners' counsel was granted by this Court.

Respondent's answers to the petitions bear uniform allegations that: petition does not state a cause of action; petitioner's exemption under R.A. 4917 has already been repealed by P.D. 1959; petitioner has the burden of proving that it is entitled to the tax refund;

and claim for tax refund, being in the nature of an exemption from taxation, must be construed strictly against petitioner.

The lone issue, therefore, that has to be resolved in these cases, lies on whether or not petitioners are entitled to the refund of the amounts of P1,602,109.69 for SMC's Local plan, and P49,865.33 for SMC's Foreign plan, as alleged erroneous payments of withholding taxes for the period from June 1, 1989 to March 31, 1991.

We rule in favor of petitioners on two grounds: (1) petitioners' tax exemption under R.A. 4917 has not been repealed by P.D. 1959; and (2) petitioners have presented substantial evidence to prove that the amounts being claimed as refundable were indeed withheld and remitted to the B.I.R. by the latter's withholding agents.

This is not the first time We have been confronted with the legal issue as to whether P.D. 1959 has revoked the tax exemption privilege of employees' pension or retirement plans. We have already decided similar cases before, and the most celebrated among them was the case of **GCL Retirement Plan vs. Commissioner of Internal Revenue,** CTA Case No. 3888, which was decided on December 15, 1986. In our decision it was clearly stated that:

> "A perusal of Presidential Decree No. 1959 do not contain any provision, paragraph or sentence that inferentially suggest the repeal

of the exemption of retirement and/or pension trust under Section 56(b) of the Tax Code in relation to Republic Act 4917."

xxx xxx xxx

"It is a canon of interpretation and construction that general laws, which Presidential Decree No. 1959 is, do not repeal special laws and that repeals by implication are not favored. xxx"

Our ruling in the said GCL case was upheld by the Supreme Court, in an en banc decision promulgated on March 23, 1992, pertinent portion of which is hereinbelow quoted and adopted as part of this decision, to wit:

"xxx

We uphold the exemption.

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:

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 employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;" xxx (emphasis ours).

In so far as employees' trusts are concerned, the foregoing provision should be taken in relation to then Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, *supra*, which took effect on 22 June

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1957. This provision specifically exempted employees' trusts from income tax and is 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.
>
> xxx xxx xxx
>
> "(b) Exception. - The tax imposed by this Title shall not apply to employee's 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' trusts for tax exemption.

And rightly so, by virtue of the *raison de'etre* behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. it provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in Rep. Act No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private Plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

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"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder *together with the income of the pension trust* are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue v. Visayan Electric Co., et al., G.R. No. L-22611, 27 May 1968, 23 SCRA 715); italics supplied.

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, can not be deemed to extend to employees' trusts. Said Decree, being a general law, can not repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which excepted employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (Villegas v. Subido, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

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Notably, too, all the tax provisions herein treated of come under Title II of the Tax Code on "Income Tax." Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII, Section 56(b), taken in conjunction with Section 56(a), *supra*, explicitly excepts employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from *income* in respect of which employees' trusts are declared exempt (Sec. 56[b], now 53[b]), Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of *income* taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

Petitioner also relies on Revenue Memorandum Circular 31-84 dated October 1984, and Bureau of Internal Revenue Ruling No. 027-e-000-00-005-85, dated 14 January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No. 1959 is a clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Pres. Decree No. 1959 did not have the effect of revoking the

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> tax exemption enjoyed by employees' trusts, reliance on those authorities is now misplaced. xxx"
>
> (pp. 494-497 SCRA vol. 207; underscoring supplied)

More in point, relative to the above-cited decision are the following observations of petitioners, as contained in their Memorandum, page 8 thereof, which state that:

> "Significantly, after the Supreme Court laid down the precedent setting decision in the above case, respondent issued Revenue Memorandum Order No. 9-93, dated October 15, 1992, prescribing the guidelines in the processing of claims for tax credit or refund of the 20% final income tax withheld from interest income/yield from deposit substitute investments and interest income from bank deposits of employees' trust/trusteed private employees retirement plans. This is an express admission by respondent that there is no longer any legal impediment to the refund/credit of the final withholding tax erroneously collected on said interest income of employees' trust." (Underscoring supplied)

To support their claims, petitioners have submitted various certifications issued by different banks showing therein the amounts of income earned from money placements and bank deposits, as well as the corresponding taxes withheld thereon. Summary of the total amount of taxes withheld is tabulated as follows:

Exhibit	Certification issued by	Amount of Tax Withheld
"H"	Corporate Investments Phils., Inc.	P 204,615.11

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Exhibit	Certification issued by	Amount of Tax Withheld
"H-1"	Central Bank of the Phils., (Gov't Securities Department)	41,236.63
"H-2"	Far East Bank and Trust Company	39,564.33
"H-3"	Security Bank and Trust Company	17,540.83
"H-4"	Citytrust	28,696.97
"H-5"	United Coconut Planters Bank	27,892.55
"H-5-a"	-do-	1,084,089.63
"H-5-b"	-do-	117,640.31
"H-5-c"		36,519.52
	Total amount being claimed as refundable	P1,597,795.88

From the above summary, it can be seen that the amount of P1,597,795.88 is lesser than P1,651,975.02, the total amount originally sought to be refunded/tax credited, as contained in the separate petitions for review filed with this Court. Petitioners admitted in their memorandum, first paragraph, page 11 thereof, that they can claim only the lesser amount as the evidence they were able to present and offer, support only the amount of P1,597,795.88.

For the purpose of establishing the veracity of the contents of the above-mentioned certifications,

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petitioner also presented as their Exhibits "G" to "G-5", Waivers of Secrecy of Bank Deposits duly executed and signed by Ms. Ma. Victoria C. Vinas, the Vice-President and Manager of the SMC Retirement and Death Benefit Plan. Two witnesses in the persons of Ms. Elizabeth Maca and Mr. Jose Versoza, were likewise presented to identify and/or explain the documentary evidence of petitioners.

On the part of the respondent, no testimonial nor documentary evidence were presented to controvert petitioners' evidence. Respondent merely objected to the purposes for which they were offered. Such being the case, respondent is deemed to have admitted the truth of the contents of petitioners' exhibits (**Citytrust Banking Corporation vs. CIR,** CTA Case No. 4099, May 26, 1991).

Subject claims were filed in the administrative and judicial levels within two (2) years from the date of payment, following the ruling laid down in the case of **Gibbs et. al vs. CIR** (15 SCRA 325), "a taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 of the Revenue Code starts to run with respect to payments effected through the withholding tax system."

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WHEREFORE, finding the petitions meritorious and in accordance with law, the same are hereby **GRANTED** but only in the lesser total amount of P1,597,795.88. Respondent is hereby ordered to refund or issue Tax Credit Certificates in the amounts of:

P1,561,276.36	-	for SMC - RDBP Local Personnel
36,519.52	-	for SMC - RDBP Foreign Personnel
P1,597,795.88		

representing erroneously paid withholding taxes for the period June 1, 1989 to March 31, 1991.

No pronouncement as to costs.

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 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

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