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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION EMPLOYEES' RETIREMENT PLAN, represented by its Trustee, THE INTERNATIONAL CORPORATE BANK - Trust Division,
Petitioner,

- versus -

C.T.A. CASE NO. 4894

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 02 1996

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DECISION

Presented before Us is a petition for review filed by the International Corporate Bank-Trust and Investment Service Division as trustee of the Philippine Associated Smelting and Refining Corporation Employees' Retirement Plan against the Commissioner of Internal Revenue for a refund of the amount of P291,017.08 allegedly representing the 20% final tax withheld from the income and/or yield earned by the Retirement fund from its bank deposits and investments in treasury and Central Bank bills for the period January 1, 1990 until June 30, 1992.

The facts are as follows:

On March 6, 1990, the Philippine Associated Smelting and Refining Company established the PASAR Employees' Retirement Plan (PASAR Plan for brevity) 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. "A"). The Bureau of Internal Revenue on April 1, 1991 declared through its Deputy Commissioner, Eufracio D. Santos, that the said PASAR Plan qualifies as a reasonable retirement plan within the contemplation of Sec. 28 (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. 50(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. C).

From January 1990 up to June 30, 1992, the Trust Division of the International Corporate Bank (Interbank for brevity), was the duly appointed trustee authorized to manage the retirement plan pursuant to a trust agreement. It invested the latter's funds in government securities, in addition to a savings deposit account it maintained.

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 are to be sold to the secondary market by INTERBANK through its Trust Division.

A final tax of 20% was imposed and withheld from interest earned on the government securities purchased and on the savings deposit being maintained. In the case of the government securities, it is the Central Bank itself who directly withheld and remitted the tax due to the treasurer of the Philippines through the Bureau of Internal Revenue. And with respect to the interest on the savings account the same is being withheld by the bank itself which maintained the account.

The taxes withheld from the income of the retirement fund for the period January 1, 1990 to June 30, 1992 are as follows:

	1990	1991	1992	Total
Savings	8 82	52.05	25.87	85.7[illegible]
T-bills	17,529.70	108,829.76	134,266.26	260,625.[illegible]
CB-bills		28,877.07	1,427.46	30,304.53
Total	17,538.61	137,758.88	135,719.59	291,017.08

On December 3, 1991 Interbank's Trust Division, as trustee of various retirement funds filed with respondent a claim for refund for the sum of P5,208,892.10; P103,225.33 of which represents the sum withheld from petitioner's earnings up to January 1, 1990. And on August 21, 1992, again filed a claim for refund of additional sum amounting to P1,799,748.70; P187,791.75 of which pertains to petitioner's earnings, until June 30, 1992.

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

Due to the Bureau of Internal Revenue's inaction on its requests, herein petitioner filed on December 29, 1992 this petition to toll the running of the two-year prescriptive period prescribed under Sec. 230 of the Tax Code on refunds.

The respondent maintains that the taxes withheld were presumed to have been collected in accordance with law and that the burden is on the petitioner to show that they were illegally collected. Respondent argued further that petitioner must show that the taxes being claimed were in fact paid to and received by the Bureau of Internal Revenue.

Petitioner formally offered in evidence the following documents and testimonies as follows:

i) Schedule of investments in government securities made by the petitioner for the period January 1989 to September 1991 and October 1, 1991 to June 30, 1992, showing the face value and maturity value of the securities, the income earned and tax collected therefrom;

ii) Letter reply of the Bureau of Internal Revenue, stating that the PASAR retirement plan qualifies as a reasonable retirement plan pursuant to Sec. 28(b)(7)(A) of the Tax Code;

iii) Confirmation of sale documents issued by Interbank's Treasury department allegedly sold in favor of the Trust division, showing the date of sale, serial number, maturity dates, face value, yields, prepaid taxes and purchase price;

iv) Certification from the Bangko Sentral ng Pilipinas (Central Bank of the Philippines) that Interbank purchased from the former's government securities department treasury bills and the corresponding final taxes have been withheld and remitted to the BIR;

v) The testimony of Mrs. Dalisay Molas a bank employee of Interbank as to the existence of a Trust agreement between PASAR and Interbank, as well as the existence of the retirement plan; and

vi) The testimony of Mr. William Logo, another bank employee of Interbank identifying documents pertaining to final taxes withheld on investments.

Herein respondent presented no objections to the admission of petitioner's evidences, insofar as their existence are concerned but objected to the collective purpose for which they are being presented, on the ground that they failed to substantiate that it is the trust fund of the Philippine Associated Smelting and Refining Corporation Employees' Retirement Plan that purchased the treasury bills and the taxes accruing therefrom were withheld and properly remitted to the government.

The sole issue presented to Us, is whether or not petitioner is entitled to the refund of the taxes withheld by the Central Bank of the Philippines on interest earned from purchases of government securities for the period January 1, 1990 until June 30, 1992.

It has been a settled jurisprudence that tax exemption is to be enjoyed by the income of employees' trust. As ruled in the leading case of Commissioner of Internal Revenue vs. Court of Appeals, 207 SCRA 487 it states that:

> "In so far as employees' trust are concerned, the foregoing provision (i.e. R.A. No. 4917, Sec. 1) should be taken in relation to then Sec. 56 (b) (now Sec. 53b) of the Tax Code, as amended by R.A. No. 1983, 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 any kind of property held in trust.
>
> 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."

This Court would have grant petitioner's request for refund of its taxes withheld based on the above ruling, however, being a court which appreciates not only questions of law but also questions of fact, we are here to determine whether petitioner has established the factual elements of its case.

Notwithstanding the fact that petitioner was able to prove the due approval of the retirement plan, and that final taxes were withheld by the Central Bank on the interest income of the treasury bills petitioner bought from the former, We are constrained to put little or no probative value to the other evidences it submitted.

Respondent's opposition to the documentary evidences submitted deserves consideration when she argues that the same did not establish the fact that the assets of the trust fund were actually used in the purchase of government securities by the petitioner, and the final taxes accruing and withheld thereon were in behalf of the said funds.

A thorough scrutiny of the records reveal the following:

a) The Central Bank's document submitted merely certifies that Interbank did purchase treasury bills from the latter, through its regular auction system, and that the taxes accruing therefrom were properly withheld and remitted. (Exh. J & K);

b) That the sale made by Interbank's Treasury Unit to its Trust Investment Services Division, was made without any qualifications, i.e., there are no indication whatsoever in the confirmation of sale that the said placement was for the account of a certain specific retirement plan, and in this case should have been the PASAR retirement plan (Exh. I to I-14);

c) An attempt to trace the placement from the confirmation of sale documents identifying the securities stated thereon to the schedule presented by the Central Bank is an exercise in futility, because the schedules presented by the Central Bank merely shows the date of issue, maturity date, face amount, interest earned, tax withheld, and credit advice made to the BIR (Exh. J to J-10; K-1 to K-10); And this was further aggravated by the fact that the placements reflected in the schedule of the Central Bank covers the period January 3, 1990 to December 26, 1990 (Exh. J-1 to J-9) and the period

January 2, 1991 to December 26, 1991 (Exh. K-1 to K-10) while on the other hand confirmation of sales presented to Us by INTERBANK covers mostly those within the period January 1, 1992 to August 19, 1992 (Exh. I-5 to I-14); and

d) Exhibits I, I-1. I-2, I-3, and I-4 whose period (1991) coincide with the schedule presented with the Central Bank has the following discrepancies:

PER INTERBANK SCHEDULE			PER CB SCHEDULE	
Issue Date	Value	Ref.	Value	Ref.
4- 4-91	P30,064,000.00	Exh. I	No Record	
8-23-91	1,192,000.00	Exh. I-1	No Record	
10-22-91	1,177,000.00	Exh. I-2	No Record	
10-23-91	2,258,000.00	Exh. I-3	P10,000,000.00	Exh. K-7
11-25-91	1,223,000.00	Exh. I-4	No Record	

From the above facts, we can deduce that if sales were made to the Trust Division, it does not follow that such sale was for the particular trust fund involved therein. The sale could be for the account of any individual and/or corporations aside from other retirement plans. And 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 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.

Another point to consider is the averment that said treasury bills were all bought from the Central Bank, when there were instances based on record presented which show glaring discrepancies (as per INTERBANK's schedule and that of CB's schedule.)

And lastly, based on petitioner's own schedule of taxes withheld from the income of PASAR Retirement Plan, covering the period January 1, 1990 to June 30, 1992, it stated in its petition (CTA records p. 2) and memorandum (CTA records p. 274) that the total final tax withheld are as follows: for the year 1990, P17,538.61, in 1991 P137,758.88 and for the six-month period ending June 1992, P135,719.59 for a total amount of P291,017.08. However, per examination of exhibits presented to Us, reveals the following significantly different amount to wit: P457,594.90, for the period 1990 to August 23, 1991 (Exh. G), and P441,397.73 for the period October 1991 to June 3, 1992 (Exh. F) or for a total amount of P898,992.63 excluding P86.74 of final taxes withheld in the savings account for the period 1989 to June 1992 (Exh. H).

Considering the circumstances and discrepancies above we agree with respondent's position, that there are no evidence on record to stress the fact that petitioner is the resources of the trust fund that was utilized in acquiring the government securities.

We will just be relying on the good faith of the petitioner if we are going to 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 assumption. (BPI vs. Commissioner of Internal Revenue, CTA Case No. 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 and Gamble Phils. Manufacturing Corporation**, 204 SCRA 377; **Associated Sugar Inc. vs. CIR**, CTA Case No. 2944, May 6, 1994 citing **Insular Lumber Co. vs. CTA** 104 SCRA 721, and **CIR vs. Rio Tuba Nickel Mining Corp.** 207 SCRA 549, **BPI vs. Comm. of Internal Revenue**, supra)

WHEREFORE, in view of insufficiency of evidence necessary to support the claims of the petitioner, the instant case under petition for review is hereby DENIED for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

(On Leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among 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