REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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INTERNATIONAL EXCHANGE BANK, as Trustee of Various Retirement Funds,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6749

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 22 2005

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DECISION

ACOSTA, E., P.J.:

Before Us is a Petition for Review under Section 11 of Republic Act No. 9282 seeking a refund in the amount of Four Hundred Forty Nine Thousand Seven Hundred Ninety One Pesos and 33/100 (P449,791.33) allegedly representing final withholding taxes on interest income from treasury bonds investments of various retirement funds under trust with petitioner for the period August 15, 2001 to September 26, 2002.

Petitioner International Exchange Bank ("iBank"), a commercial banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is engaged among others, in trust and investment operations.[1]

[1] Joint Stipulation of Facts and Issue, par. 1

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Pursuant to various trust agreements, the following companies, namely: Jimenez/D'Arcy, Inc. Retirement Plan, IBank Retirement Plan, Lamitube Corporation Employees Retirement Plan and Philippine General Merchandising Corporation Retirement Plan, appointed petitioner as trustee of their retirement funds ("funds", for brevity).[2] As trustee, petitioner holds, manages, invests and reinvests the assets of the funds which were established to provide for the retirement, death, disability and separation benefits of the members of each company.[3]

To generate income, petitioner invested the funds in government securities such as long term fixed rate treasury notes which earned interest income.[4]

On December 16, 2002, petitioner filed an application for refund in the amount of Four Hundred Forty Nine Thousand Seven Hundred Ninety One Pesos and 33/100 (P449,791.33) with the Bureau of Internal Revenue (BIR) due to erroneous withholding of final taxes on interest income earned from treasury bonds investments of the funds covering the period from August 15, 2001 to September 26, 2002.[5]

The inaction of the BIR to immediately resolve petitioner's claim for refund prompted the latter to file a Petition for Review on August 15, 2003 before this Court invoking exemption of retirement funds from payment of 20% final withholding taxes on income derived from investments in treasury bonds. Petitioner relied upon the case of *Far East Bank and Trust Company, as trustee of various Retirement Funds vs. Commissioner of Internal Revenue*[6], wherein this Court ruled that under the 1997 National Internal Revenue Code ("NIRC") and Republic Act (R.A.) No. 4917, income tax exemption of an approved employee retirement plan extends to exemption from payment of final taxes on interest income from deposit substitutes.

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[2] Joint Stipulation of Facts and Issue , par. 2
[3] Exhibits A-D
[4] Exhibits I-Q, X, inclusive, R-U, W-1 to W-5
[5] Annex Y, Petition for Review
[6] CTA Case No. 5646, August 25, 2000

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Petitioner further argues that taxation imposed against income earnings from investments of retirement funds would unduly cause diminution of benefits to be received by the beneficiaries of the trust.

On the other hand, the Commissioner of Internal Revenue ("respondent") in his Answer raises the following Special and Affirmative Defenses:

> ***"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;***
>
> ***5. The amount of P449,791.33 being claimed by petitioner as alleged final taxes withheld on interest income from treasury bonds investments of tax-exempt retirement funds for taxable years 2001 and 2002 is not properly documented;***
>
> ***6. In an action for refund/credit, 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;***
>
> ***7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 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, and as such, are looked upon with disfavor."***

During trial, petitioner presented the following documentary and testimonial evidence, to wit:

1. ***Various retirement plans and their respective tax-exempt certifications from the BIR;***
2. ***Trust Agreements;***
3. ***Documents of Confirmation Sale of Treasury Bills;***
4. ***Confirmation of Purchase;***
5. ***Certifications of Trust issued by petitioner's trust center;***
6. ***Schedule of Tax Claim Computation;***
7. ***Certification issued by the Bureau of Treasury;***
8. ***Advise Slip.***
9. ***Testimony of Trust Officer Mr. Juan Carlos Briones***[7]

The case was submitted for resolution sans the memorandum of the respondent.

The parties mutually agreed that the lone issue to be resolved by this Court is "*whether or not petitioner is entitled to a refund in the aggregate amount of P449,791.33*

[7] Rollo, pp. 235-342 and TSN dated March 30, 2004 and May 17, 2004

allegedly pertaining to final taxes on interest income erroneously paid by the Bureau of Treasury on behalf of iBank to the BIR for the years 2001 and 2002 arising from investments in treasury bonds of tax-exempt retirement funds under trust with iBank".[8]

The petition is meritorious.

Under Republic Act (R.A.) No. 4917[9] and Section 60 (B) of the 1997 NIRC, employees' trusts enjoy tax exempt status.

> *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, garnishment, levy or seizure by or under any legal or equitable process whatsoever x x x*
>
> *SEC. 60. Imposition of Tax .-*
>
> *(A) Application of Tax. – The tax imposed by this Title upon individuals shall apply to the income of estates or any kind of property held in trust including:*
>
> *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 (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, x x x*

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Court of Appeals, The Court of Tax Appeals and GCL Retirement Plan*[10] already settled the issue in this wise:

> *"We uphold the exemption.*
>
> *xxx xxx xxx*
>
> *The tax-exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs*

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[8] Rollo, p. 218

[9] An Act Providing That Retirement Benefits of Employees of Private Firms Shall Not Be Subject To Attachment, Levy, Execution, Or Any Tax Whatsover

[10] 207 SCRA 487

from the foregoing provisions. 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 d'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.

xxx xxx xxx

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 withholding 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 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."

Further, the BIR already certified that the income of the subject retirement funds from its investments are exempt from income tax having met all the requirements of a reasonable benefit plan pursuant to R.A. 4917. The pertinent excerpts of said certifications read:

"After a careful review of the aforementioned documents, it was disclosed that the x x x Retirement Plan:
(1)is a definite written program;
(2)is more or less permanent in character;
(3)covers all regular employees of the company;
(4)is non-discriminatory;
(5)is duly funded and trusteed; and
(6) ***provides that no part of the corpus or income of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member employees and their beneficiaries. "***[11]

Verily, income earned in treasury bonds investments by the subject retirement funds under trust with petitioner is not subject to final withholding taxes. What remains to be resolved then is whether petitioner is entitled to the claim sought for on the basis of the evidence presented.

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[11] Exhibits E, F, G & H

Records disclose that pursuant to the trust agreements, petitioner invested the assets of the subject retirement funds in treasury bonds and that the interest income earned from the said investments was subjected to 20% final withholding tax.

The "Confirmation of Sale Without Recourse" (*Exhibits I to Q & X*) and "Confirmation of Purchase" (*Exhibit X-3*) submitted by petitioner show that on various dates starting May 7, 2001 to July 6, 2001, petitioner's Trust Center, on behalf of the retirement funds, purchased Fixed Rate Treasury Notes (FXTN) from petitioner's Treasury Group. These FXTNs were directly purchased by petitioner's Treasury Group from the Bureau of Treasury via on-line trading facility. The purchase transactions as reflected in the confirmations of sales were summarized in petitioner's Schedule of Tax Claim Computation (*Exhibit V*) which listed all the retirement funds subject of the instant petition with their corresponding trust account numbers and the details of each investment made per trust account such as the treasury bonds' face value, coupon date, 20% final withholding tax, net and gross interest income earned and the three (3) digit series number of the FXTNs, as follows:

	FIXED RATE TREASURY NOTES (FXTN)			Gross		Net	
Exhibit	Series No.	Face Value	Coupon Date	Interest Income	20% Final Tax Withheld	Interest Income	Exhibit
I	FXTN 2-74	P 971,616.08	8/15/01	P 36,037.51	P 7,207.50	P 28,830.01	DD
		971,616.08	2/15/02	66,191.35	13,238.27	52,953.08	Z
		971,616.08	8/15/02	66,191.35	13,238.27	52,953.08	Y, Y-1
J	FXTN 5-18	263,389.80	12/26/01	25,965.84	5,193.17	20,772.68	FF
		263,389.80	6/25/02	27,655.93	5,531.19	22,124.74	EE
K	FXTN 2-68	5,770,024.19	9/7/01	152,264.53	30,452.91	121,811.62	II
		5,770,024.19	3/7/02	360,626.51	72,125.30	288,501.21	HH
		5,770,024.19	9/7/02	360,626.51	72,125.30	288,501.21	GG
L	FXTN 2-74	1,923,818.56	8/15/01	61,161.40	12,232.28	48,929.12	DD
		1,923,818.56	2/15/02	131,060.14	26,212.03	104,848.11	AA
		1,923,818.56	8/15/02	131,060.14	26,212.03	104,848.11	YY-1
M	FXTN 2-74	951,861.02	8/15/01	16,571.64	3,314.33	13,257.31	
		951,861.02	2/15/02	64,845.53	12,969.11	51,876.42	BB
		951,861.02	8/15/02	64,845.53	12,969.11	51,876.42	Y, Y-1
N	FXTN 2-74	505,940.72	8/15/01	15,701.73	3,140.35	12,561.38	
		505,940.72	2/15/02	34,467.21	6,893.44	27,573.77	CC
		505,940.72	8/15/02	34,467.21	6,893.44	27,573.77	Y, Y-1
O	FXTN 5-17	408,351.45	9/26/01	18,602.68	3,720.54	14,882.14	JJ
		408,351.45	3/26/02	40,835.15	8,167.03	32,668.12	KK
		408,351.45	9/26/02	40,835.15	8,167.03	32,668.12	

P	FXTN 5-18	841,456.71	2/25/01	82,953.61	16,590.72	66,362.89	
		841,456.71	3/13/02	38,286.28	7,657.26	30,629.02	
X, X-3	FXTN 5-38	2,285,192.65	8/22/01	86,519.93	17,303.99	69,215.95	LL
		2,285,192.65	2/22/02	165,676.47	33,135.29	132,541.17	MM
		2,285,192.65	3/13/02	19,328.92	3,865.78	15,463.14	
Q	FXTN 5-38	931,503.32	8/22/01	30,765.48	6,153.10	24,612.38	LL
		931,503.32	2/22/02	67,533.99	13,506.80	54,027.19	NN
		931,503.32	3/13/02	7,878.97	1,575.79	6,303.18	
				P 2,248,956.69	***P 449,791.33***	P 1,799,165.36	

The collection of the amounts of interest income (net of 20% final tax) earned by the subject retirement funds from the aforesaid investments can be traced from the Advice Slips issued by petitioner's Treasury Group to petitioner's Trust Center for each subject trust accounts (*Exhibits Y to NN*). As can be seen from the Advice Slips, the net amounts of interest income were either credited to the deposit accounts of the subject retirement funds or were paid through the issuance of Manager's Checks.

As correctly indicated in the Schedule of Tax Claim Computation, final taxes withheld from the interest income earned on the treasury bond investments of the retirement funds for the period covering August 15, 2001 to September 26, 2002 amounted to P449,791.33. The actual withholding of these 20% final taxes and subsequent remittance thereof to the Bureau of Internal Revenue can be traced to the Certification issued by the Bureau of Treasury dated November 20, 2002 (*Exhibits W*). Per the said certification, total final taxes withheld from treasury bond investments of petitioner's clients (including the subject retirement funds) amounted to P8,798,532.36. The details of the treasury bonds investments specifically the series number, coupon interest dates and yield appearing on the Confirmations of Sales and Advice Slips which were issued to the subject retirement funds are similar to the details of the treasury bonds appearing on the "Statement of Taxes Withheld on Treasury Bonds of International Exchange Bank (040-0002) from August 15, 2001 to September 26, 2002" (*Exhibits W-1 to W-5*) attached to the Certification issued by the Bureau of Treasury, thereby proving that these were the very same treasury bonds sold

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to subject retirement funds and whose income thereon, net of the 20% final withholding taxes, were collected by petitioner and turned over to the said funds.

WHEREFORE, premises considered, the Petition for Review is hereby GRANTED. Respondent is directed to REFUND to petitioner the amount of Four Hundred Forty Nine Thousand Seven Hundred Ninety One Pesos and 33/100 (P449,791.33) representing final taxes withheld on interest income from treasury bond investments of tax-exempt retirement funds for the period August 15, 2001 to September 26, 2002.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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