REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

METROPOLITAN BANK & TRUST COMPANY,
Respondent.

EB No. 347
(CTA Case No. 6923)
Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
JUN 2 4 2008

x - x

DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated August 7, 2007 in CTA Case No. 6923 entitled, "*Metropolitan Bank & Trust Company, petitioner vs. Commissioner of Internal Revenue, respondent*" partially granting Respondent-Metropolitan Bank & Trust Company's (MBTC) Petition for Review therein, and ordering Petitioner-CIR to refund or issue a tax credit certificate to MBTC in the amount of P73,293,126.84 representing its erroneously withheld and paid final income taxes for the taxable year 2002, and from the Resolution[3]

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[1] CTA En Banc Rollo, pp. 7-19.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 23-40.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 41-42.

(*Assailed Resolution*) dated November 26, 2007 denying petitioner-CIR's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

"Petitioner (herein respondent-MBTC) is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Metrobank Plaza, Sen. Gil Puyat Avenue, Makati City. It is engaged in the business of expanded commercial banking and the business of a trust company which includes providing services such as deposit products, loans and trade finance, domestic and foreign fund transfers, treasury, foreign exchange, trading and remittances, trust services incident to its operation as a bank.[4] Petitioner is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-477-863-000 on April 6, 1962. On April 15, 2004, its status as a VAT-registered entity was converted to that of a NON-VAT taxpayer and was accordingly issued BIR Certificate of Registration No. 8RC0000016899.[5]

On the other hand, respondent (herein petitioner-CIR) is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law.

For calendar year 2002, petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F)[6], with details as follows:

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[4] Paragraphs 6 and 7, Joint Stipulation of Facts and Issues, CTA Second Divison Rollo, page 139.
[5] Par. 8, Joint Stipulation of Facts and Issues, CTA Second Division Rollo, page 139.
[6] Exhibits "C" to "N", inclusive of sub-markings, CTA Second Division Rollo.

A. SUMMARY OF INFORMATION BASED ON MONTHLY REMITTANCE RETURNS OF FINAL TAXES WITHHELD PER BIR FORM 1601-F

Calendar Year 2002 Month	Date of Filing of Original Monthly Remittance Returns of Final Income Taxes Withheld	10% Final Tax on Interest and Other Income Payments on Foreign Currency Transactions/Loan Payable to FCDUs	10% Final Tax on Interest and Other Income Payments on Foreign Currency Transactions/Loan Payable to OBUs	20% Final Tax on All Kinds of Royalty Payments to Domestic and Resident Foreign Corporations	25% Final Tax on Payments to Non-Resident Alien in Trade or Business	Total Amount Paid/Withheld
January	Feb. 11, 2002	10,129,312.47	1,472,257.78	-	92,530.80	11,694,101.05
February	Mar. 11, 2002	8,322,281.84	88,110.68	2,236,872.00	3,908,045.03	14,555,309.55
March	Apr. 10, 2002	10,225,868.77	150,314.72	29,866.09	868,356.67	11,274,406.25
April	May 10, 2002	10,602,364.47	364,676.37	-		10,967,040.84
May	June 10, 2002	12,125,217.22	620,858.40	8,012,450.53		20,758,526.15
June	July 10, 2002	10,296,654.89	1,009,031.86	927,235.22		12,232,921.97
July	Aug. 12, 2002	10,801,710.64	1,308,707.51	-		12,110,418.15
August	Sept. 10, 2002	6,115,040.33	1,204,848.63	530,836.96		7,850,725.92
September	Oct. 10, 2002	5,122,565.43	2,028,610.29	489,025.47		7,640,201.19
October	Nov. 11, 2002	6,394,787.83	1,285,101.61	10,917,780.65		18,597,670.09
November	Dec. 10, 2002	6,144,354.51	1,666,930.94	309,907.92		8,121,193.37
December	Jan. 10, 2003	63,046,370.03	698,507.16	4,106,694.00		67,851,571.19
Total		**159,326,528.43**	**11,897,955.95**	**27,560,668.84**	**4,868,932.50**	**203,654,085.72**

Petitioner, via letter dated February 10, 2004, requested respondent's opinion on whether gains realized by the FCDU of Metrobank from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years fall within the ambit of the exclusion from gross income as provided in Section 32(B)(7)(g) of the 1997 NIRC.

In response to petitioner's Request for a Ruling on the matter, the BIR ruled in BIR Ruling No. DA-124-2004[7] dated March

[7] Exhibit "BB", CTA Second Division Rollo.

22, 2004, that the 'gains realized by Metrobank on its FCDU transactions, from the sale, exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years shall be excluded from gross income as prescribed in Section 32(B)(7)(g) of the Tax Code of 1997 and consequently from the final income tax of 10% imposed under Section 27(D)(3) of the same Code.'

Relying on the said Ruling, petitioner then filed on April 5, 2004 a written claim for refund of the ten percent (10%) final income taxes withheld and paid in the amount of P79,600,076.83.[8]"
(Assailed Decision, pp. 2-4)

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[9] on August 7, 2007, the dispositive portion of which reads as follows:

> ***"WHEREFORE**, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **SEVENTY THREE MILLION TWO HUNDRED NINETY THREE THOUSAND ONE HUNDRED TWENTY SIX AND 84/100 PESOS (P73,293,126.84)**, representing petitioner's erroneously withheld and paid final income taxes, computed as follows:*

Claimed Refund/Tax Credit		*P 79,600,076.83*
Less:		
Barred by Prescription	*P 234,396.58*	
Maturity of less than Five (5) years	*6,072,553.41*	*6,306,949.99*
Total		*P 73,293,126.84*

> ***SO ORDERED."***

[8] Exhibit "CC", CTA Second Division Rollo.
[9] Supra, note 2.

Not satisfied with the above decision, herein petitioner-CIR filed a "Motion for Partial Reconsideration[10]" on August 28, 2007. A "Comment on Respondent's Motion for Partial Reconsideration"[11] was filed by herein respondent-MBTC on October 5, 2007.

In the *Assailed Resolution*[12] dated November 26, 2007, the *CTA Second Division* denied herein petitioner-CIR's "Motion for Partial Reconsideration" for lack of merit.

On December 18, 2007, herein petitioner-CIR filed a "Motion for Extension of Time to File Petition for Review[13]" with the *CTA En Banc*. In a Resolution[14] dated December 21, 2007, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from December 20, 2007 or until January 4, 2008, within which to file a Petition for Review. On December 20, 2007, herein petitioner-CIR filed the instant Petition for Review[15] with the *CTA En Banc*, praying that the Decision dated August 7, 2007 and the Resolution dated November 26, 2007 in CTA Case No. 6923 entitled, "*Metropolitan Bank & Trust Company, petitioner vs. Commissioner of Internal Revenue, respondent*" be reversed and set aside and another one be rendered denying the entire claim for refund.

Petitioner raised its sole issue[16] in the instant Petition for Review, to wit:

> WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND IN THE REDUCED AMOUNT OF P73,293,126.84 REPRESENTING ALLEGED ERRONEOUSLY WITHHELD AND PAID FINAL INCOME TAXES FOR CALENDAR YEAR 2002.

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[10] CTA Second Division Rollo, pp. 420-426.
[11] CTA Second Division Rollo, pp. 430-436.
[12] Supra, note 3.
[13] CTA En Banc Rollo, p. 1-3.
[14] CTA En Banc Rollo, p. 6.
[15] Supra, note 1.
[16] Ibid, CTA En Banc Rollo, p. 13.

The CTA *En Banc* promulgated a Resolution[17] on January 30, 2008, ordering the respondent-MBTC to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. In compliance with the said Resolution, respondent-MBTC filed its Comment on Petition for Review on February 7, 2008.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

As aptly discussed by the *CTA Second Division*, and We quote, to wit:

> "This Court addresses first the issue of whether or not the administrative and judicial claims for refund or issuance of a tax credit certificate for its alleged erroneously paid final income taxes for calendar year 2002 amounting to P79,600,076.83 had been timely filed by petitioner, pursuant to Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended, which provide that:
>
> '**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes**. – The Commissioner may—
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[17] CTA En Banc Rollo, p. 54.

xxx xxx xxx'

'**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.—**

xxx xxx xxx

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.' (*Emphasis supplied*)

In order to prove its timely remittance and payment of its final income taxes, petitioner presented in evidence its Monthly Remittance Returns of Final Income Taxes Withheld[18] for calendar year 2002, with the following details:

Calendar Year 2002	Date of Filing of Original Monthly Remittance Returns of Final Income Taxes Withheld	Amount of Withholding Taxes Remitted on Gains Realized from the Sale or Exchange of Investments in Foreign Currency-Denominated Debt Securities, Bonds, Debentures or Other Certificate of Indebtedness with a Maturity of More Than Five (5) Years
January	February 11, 2002	142,263.90
February	March 11, 2002	92,132.68
March	April 10, 2002	1,068,032.66
April	May 10, 2002	3,101,001.38
May	June 10, 2002	3,455,840.82
June	July 10, 2002	2,022,279.04
July	August 12, 2002	1,700,644.09
August	September 10, 2002	4,167,242.52
September	October 10, 2002	2,318,078.89
October	November 11, 2002	480,976.05
November	December 10, 2002	3,410,379.90

[18] Exhibits "C" to "N", CTA Second Division Rollo.

December	January 10, 2003	57,641,204.90
TOTAL		**79,600,076.83**

Based on the aforementioned information, petitioner should have filed both its administrative and judicial claims for refund/issuance of tax credit certificate on February 10, 2004 for the entire claim to fall within the two (2)-year prescriptive period allowed by law;[19] otherwise, any amount not timely claimed shall be barred. In this instant case, petitioner filed its administrative claim and Petition for Review on April 5 and 6, 2004, respectively. Effectively, refund claims of its final tax payments made prior to April 6, 2002 is thus barred by prescription. In this regard, petitioner's claim of erroneous final tax remittance and payment for the months of January and February 2002, which were correspondingly filed and remitted on February 11, 2002 and March 11, 2002, in the total amount of P234,396.58, has already prescribed for petitioner' failure to timely claim the same.

As regards the other issues raised, this Court will discuss them together inasmuch as they are interrelated.

For the year ended December 31, 2002, petitioner's FCDU realized a total gain of US$15,087,926.42, which is equivalent to P796,000,768.28, from the sale of its investments in foreign currency denominated bonds with maturities of more than five years.[20] Relative to such sales, petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No.1601-F)[21] for withholding income taxes on February 11, 2002; March 11, 2002; April 10, 2002; May 10, 2002; June 10, 2002; July

[19] Section 229, National Internal Revenue Code of 1997
[20] Exhibit "UU" with sub-markings, Annex III, CTA Second Division Rollo.
[21] Exhibits "C" to "N", CTA Second Division Rollo.

10, 2002; August 12, 2002; September 10, 2002; October 10, 2002; November 11, 2002; December 10, 2002 and January 10, 2003, respectively.[22] Pursuant to Section 27(D)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, and implemented by Revenue Regulations No. 10-98, petitioner withheld and remitted a ten percent (10%) final income tax on its gross income payments for the said debt securities. Section 27(D)(3) provides thus:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.*—
>
> xxx xxx xxx
>
> (D) *Rates of Tax on Certain Passive Incomes.*—
>
> xxx xxx xxx
>
> (3) *Tax on Income Derived under the Expanded Foreign Currency Deposit System.*—Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income.
>
> Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

[22] Paragraph 11, Joint Stipulation of Facts and Issues, CTA Second Division Rollo.

Petitioner withheld and remitted the amount of 10% from the total amount of P796,000,768.28 gains, or an amount of P79,600,076.83.

However, on April 5, 2004, petitioner filed an administrative claim for refund/issuance of a tax credit certificate with the Office of respondent laying as basis Section 32(B)(7)(g) of the NIRC of 1997, as amended, which provides that gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years are excluded from gross income. Section 32(B)(7)(g) of the NIRC of 1997 is hereunder quoted:

> "SEC. 32. *Gross Income.*—
>
> (B) *Exclusion from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> xxx xxx xxx
>
> (7) *Miscellaneous Items.*—
>
> xxx xxx xxx
>
> (g) *Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness.*—Gains realized from the same or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years."

This Court finds for petitioner.

The exclusion from gross income of the gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years, and its corresponding exemption thereof from income tax, has consistently been confirmed by the Office of respondent. In fact, respondent declared in BIR Ruling No. DA-124-2004[23] dated March 22, 2004, that:

> "xxx. Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years are excluded from gross income by clear provision of Section 32(B)(7)(g) of the Tax Code of 1997 xxx.
>
> xxx xxx xxx
>
> IN VIEW OF THE FOREGOING, this Office holds that gains realized by Metrobank on its FCDU transactions, from the sale, exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years shall be excluded from gross income as prescribed in Section 32(B)(7)(g) of the Tax Code of 1997 and consequently from the final income tax of 10% imposed under Section 27(D)(3) of the same Code."

Moreover, in support of his findings, respondent held that "the exemption does not distinguish as to the type of currency the bond, debentures or other certificate of indebtedness is made nor does it discriminate as to the nature of the business of the taxpayer involved in the transaction. Accordingly, the exemption in Section 32(B)(7)(g) applies to the transaction itself regardless as to who derives the gains such that, as long as the gain is derived from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness, it is exempt from income tax without qualification."

In this regard, this Court finds that petitioner has sufficiently proven that it had realized gains from the sale or exchange of its investments in foreign currency-denominated debt securities, bonds, debentures or other certificate of indebtedness with

[23] Exhibit "BB", CTA Second Division Rollo.

maturities of more than five years; taking into consideration petitioner's Sales Confirmation Form, Fixed Income Transactions Taking Value, Self Responding Ticket and FCDU Fixed Income Daily Gain/Loss Report[24]. The amount of P796,000,768.28 was declared as part of petitioner's total gross onshore income of P3,783,697,999.00 for calendar year 2002.[25] More specifically, the amount of P796,000,768.28 is shown as part of the line gain (loss) on securities amounting to P863,803,095[26] under column D for Gross Onshore Income. The total gross onshore income of P3,783,697,999.00 formed part of the total gross income of P5,874,718,895[27] under the Schedule of Onshore and Offshore Income and the Corresponding Income Tax for Calendar Year Ended December 31, 2002. In turn, this total gross income of P5,874,718,895 is included in the net profit before taxes of P3,367,132,943[28] under the same schedule. The net profit before taxes of P3,367,132,943 was also shown under the line Income Before Provision of Income Tax of P3,367,132,943[29] in petitioner's Comparative Statements of Income and Expenses for the years ended December 31, 2002 and 2001, which were attached to its Annual Income Tax Return[30]. Thus, in relation to the provisions of Section 32(B)(7)(g) of the NIRC of 1997, as amended, there was indeed an erroneous withholding and payment of the final income taxes amounting to P79,600,076.83.

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24 Exhibits "QQ1-364," Exhibits "SS1-318," Exhibits "RR1-219" and Exhibits "TT1-350, CTA Second Division Rollo.
25 Exhibit "B-1", CTA Second Division Rollo.
26 Exhibit "B-2", CTA Second Division Rollo.
27 Exhibit "B-3", CTA Second Division Rollo.
28 Exhibit "B-4", CTA Second Division Rollo.
29 Exhibit "B-5", CTA Second Division Rollo.
30 Exhibit "A", CTA Second Division Rollo.

As correctly presented by the Report of the Court Commissioned Independent Certified Public Accountant (CPA), the following tables pertaining to petitioner's investments in bonds with maturities of more than five years provide this Court with information necessary for the evaluation of petitioner's claim, thus:

A. SUMMARY OF INFORMATION BASED ON MONTHLY REMITTANCE RETURNS OF FINAL TAXES WITHHELD PER BIR FORM 1601-F

Calendar Year 2002 Month	Date of Filing of Original Monthly Remittance Returns of Final Income Taxes Withheld	10% Final Tax on Interest and Other Income Payments on Foreign Currency Transactions/Loans Payable to FCDUs	10% Final Tax on Interest and Other Income Payments on Foreign Currency Transactions/Loans Payable to OBUs	20% Final Tax on All Kinds of Royalty Payments to Domestic and Resident Foreign Corporations	25% Final Tax on Payments to Non-Resident Alien in Trade or Business	Total Amount Paid/Withheld	Exhibit No.
January	February 11, 2002	10,129,312.47	1,472,257.78	-	92,530.80	11,694,101.05	"C"
February	March 11, 2002	8,322,281.84	88,110.68	2,236,872.00	3,908,045.03	14,555,309.55	"D"
March	April 10, 2002	10,225,868.77	150,314.72	29,866.09	868,356.67	11,274,406.25	"E"
April	May 10, 2002	10,602,364.47	364,676.37	-		10,967,040.84	"F"
May	June 10, 2002	12,125,217.22	620,858.40	8,012,450.53		20,758,526.15	"G"
June	July 10, 2002	10,296,654.89	1,009,031.86	927,235.22		12,232,921.97	"H"
July	August 12, 2002	10,801,710.64	1,308,707.51	-		12,110,418.15	"I"
August	September 10, 2002	6,115,040.33	1,204,848.63	530,836.96		7,850,725.92	"J"
September	October 10, 2002	5,122,565.43	2,028,610.29	489,025.47		7,640,201.19	"K"
October	November 11, 2002	6,394,787.83	1,285,101.61	10,917,780.65		18,597,670.09	"L"
November	December 10, 2002	6,144,354.51	1,666,930.94	309,907.92		8,121,193.37	"M"
December	January 10, 2003	63,046,370.03	698,507.16	4,106,694.00		67,851,571.19	"N"
Total		**159,326,528.43**	**11,897,955.95**	**27,560,668.84**	**4,868,932.50**	**203,654,085.72**	

B. SUMMARY OF MONTHLY REMITTANCE OF 10% FINAL INCOME TAXES REMITTED

Calendar Year 2002 Month	10% Final Tax on FCDU Income (A)	10% Final Tax on Gains Realized from the Sale or Exchange of Investment with Maturity of Five Years or Less (PHP) (B)	10% Final Tax on Gains Realized from the Sale or Exchange of Investment with Maturity of More than Five Years (Php) (C)	Total Amount of Taxes Withheld on Gross Income on Foreign Currency Transactions Paid to FCDUs per Books (D=A+B+C)	Total Amount of Taxes Withheld on Gross Income on Foreign Currency Transactions Paid to FCDUs per BIR Form 1601-F	Exhibit No.
January						"O"

	9,705,482.91	281,565.66	142,263.90	10,129,312.47	10,129,312.47	
February	7,551,873.33	678,275.83	92,132.68	8,322,281.84	8,322,281.84	"P"
March	8,424,421.15	733,414.97	1,068,032.66	10,225,868.78	10,225,868.78	"Q"
April	7,250,073.56	251,289.54	3,101,001.38	10,602,364.48	10,602,364.48	"R"
May	8,429,684.92	239,691.48	3,455,840.83	12,125,217.23	12,125,217.23	"S"
June	7,885,383.55	388,992.29	2,022,279.04	10,296,654.88	10,296,654.88	"T"
July	8,913,042.00	188,024.54	1,700,644.09	10,801,710.63	10,801,710.63	"U"
August	1,828,579.36	119,218.45	4,167,242.52	6,115,040.33	6,115,040.33	"V"
September	2,669,442.53	135,044.01	2,318,078.89	5,122,565.43	5,122,565.43	"W"
October	5,759,029.75	154,782.03	480,976.05	6,394,787.83	6,394,787.83	"X"
November	2,680,257.21	53,717.40	3,410,379.90	6,144,354.51	6,144,354.51	"Y"
December	5,386,087.85	19,077.29	57,641,204.90	63,046,370.04	63,046,370.04	"Z"
Total	**76,483,358.12**	3,243,093.49	79,600,076.83	**159,326,528.44**	**159,326,528.44**	

C. SUMMARY OF MONTHLY GAIN ON SALE OF INVESTMENTS WITH MATURITIES OF MORE THAN FIVE YEARS

Calendar Year 2002 Month	Gains Realized from the Sale or Exchange of FCDU with Maturity of More than Five Years (USD)	Current Month Exchange Rate	Gains Realized from the Sale or Exchange of FCDU with Maturity of More than Five Years (Php) (C)	10% Final Tax on Gains Realized from the Sale or Exchange of FCDU with Maturity of More than Five Years (Php) per Books	10% Final Tax on Gains Realized from the Sale or Exchange of FCDU with Maturity of More than Five Years (Php) per Schedule
January	$ 27,784.29	51.20	P 1,422,639.00	P 142,263.90	P 142,263.90
February	17,965.89	51.28	921,326.77	92,132.68	92,132.68
March	209,024.70	51.10	10,680,326.58	1,068,032.66	1,068,032.66
April	613,027.85	50.59	31,010,013.79	3,101,001.38	3,101,001.38
May	690,698.50	50.03	34,558,408.25	3,455,840.83	3,455,840.83
June	400,126.44	50.54	20,222,790.40	2,022,279.04	2,022,279.04
July	332,189.48	51.20	17,006,440.94	1,700,644.09	1,700,644.09
August	804,052.35	51.83	41,672,425.20	4,167,242.52	4,167,242.52
September	442,297.06	52.41	23,180,788.91	2,318,078.89	2,318,078.89
October	90,371.66	53.22	4,809,760.49	480,976.05	480,976.05
November	636,561.84	53.57	34,103,798.97	3,410,379.90	3,410,379.90
December	10,823,826.36	53.25	576,412,048.98	57,641,204.90	57,641,204.90
Total	**$ 15,087,926.42**		P 796,000,768.28	P 79,600,076.83	**P 79,600,076.83**

The first table, or the "Summary of Information Based on Monthly Remittance Returns of Final Income Taxes Withheld per

BIR Form 1601-F[31]", shows that petitioner, in accordance with Revenue Regulations (RR) No. 10-98, duly withheld and remitted the total final taxes due on its onshore income in the amount of P203,654,085.72 for calendar year 2002. Out of the P203,654,085.72, P159,326,528.43 represents the 10% final income taxes on foreign currency transactions payable to FCDUs, which was duly remitted to respondent. The taxes were filed and paid within ten (10) days following the end of each of the corresponding month or on the date it was due, as prescribed under Section 2.58(A)(2)(a) of RR No. 2-98, to wit:

> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE
>
> (A) Monthly return and payment of taxes withheld at source—
>
> xxx xxx xxx
>
> (2) WHEN TO FILE—
>
> (a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within **ten (10) days** after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year. (*Emphasis supplied*)

Based on the second table, the total amount of P159,326,528.44, representing 10% final income taxes on foreign currency transactions payable to FCDUs, is composed of the 10% final tax on FCDU income, the 10% final tax on gains realized from the sale or exchange of investment with maturity of five (5) years or less, and 10% final tax on gains realized from the sale or

[31] Exhibits "C" to "N", CTA Second Division Rollo.

exchange of investment with maturity of more than five (5) years (P76,483,358.12 + P3,243,093.49 + P79,600,076.83).

The third table shows that the amount of P79,600,076.83, which is the subject claim for refund/issuance of a tax credit certificate, represents the 10% of the gains realized from the sale or exchange of foreign currency denominated debt securities, bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years of P796,000,768.28, which, as explained above, is shown as part of petitioner's total gross onshore income of P3,783,697,999.00.

After considering that petitioner is entitled to the refund claimed, this Court now examines whether or not the total amount of P79,600,076.83 is refundable. It is ascertained that out of the total claim of P79,600,076.83, the amount of P6,072,553.41 should be disallowed since the same represents petitioner's investment with maturity of five years and less, thus:

Deal No.	Exhibits	Amount	Current Month Exchange Rate	Peso Value	10% Final Tax
MAY					
1003775	QQ-76/ RR-53/ SS-89/TT-77	173,586.12	50.03	8,684,513.58	868,451.36
1003812	QQ-77/ RR-54/ SS-92/TT-79	8,870.38	50.03	443,785.11	44,378.51
1003842	QQ-79/ RR-56/ SS-97/TT-83	10,210.06	50.03	510,809.30	51,080.93
1003859	QQ-80/ RR-57/ SS-99/TT-85	6,917.86	50.03	346,100.54	34,610.05
1003936	QQ-92/ RR-66/ SS-113/TT-97	3,580.14	50.03	179,114.40	17,911.44
1003925	QQ-93/ RR-67/ SS-115/TT-99	6,409.76	50.03	320,680.29	32,068.03
1003649	QQ-94/ RR-68/ SS-115/TT-99	5,710.90	50.03	285,716.33	28,571.63
JUNE					
1004066	QQ-99/ RR-71/ SS-127/TT-107	12,049.65	50.54	608,989.31	60,898.93
1004176	QQ-107/ RR-76/ SS-137/TT-115	40,241.05	50.54	2,033,782.67	203,378.27
JULY					
1004222	QQ-111/ RR-80/ SS-143/TT-119	13,109.72	51.20	671,217.66	67,121.77
1004223	QQ-112/ RR-80/ SS-143/TT-119	13,109.72	51.20	671,217.66	67,121.77

1004229	QQ-115/ RR-82/ SS-145/TT-121	18,758.74	51.20	960,447.49	96,044.75
1004211	QQ-118/ SS-148/ TT-125	16,127.81	51.20	825,743.87	82,574.39
1004262	QQ-124/ RR-85/ SS-153/TT-129	5,038.80	51.20	257,986.56	25,798.66
1004296	QQ-130/ SS-159/TT-137	39,325.65	51.20	2,013,473.28	201,347.33
AUGUST				-	-
1004368	QQ-139/ RR-94/ SS-170/TT-151	228,884.31	51.83	11,863,073.79	1,186,307.38
1004381	QQ-140/ RR-95/ SS-171/TT-155	150,517.83	51.83	7,801,339.13	780,133.91
1004390	QQ-141/ RR-96/ SS-173/TT-155	8,280.26	51.83	429,165.88	42,916.59
1004399	QQ-144/ RR-97/ SS-175/TT-159	4,310.72	51.83	223,424.62	22,342.46
1004429	QQ-145/ RR-98/ SS-176/TT-161	1,177.67	51.83	61,038.64	6,103.86
1004431	QQ-146/ RR-98/ SS-177/TT-161	1,265.99	51.83	65,616.26	6,561.63
1004450	SS-179/ TT-163	61,586.82	51.83	3,192,044.88	319,204.49
1004461	QQ-150/ RR-99/ SS-180/TT-167	2,110.15	51.83	109,369.07	10,936.91
SEPTEMBER				-	-
1004462	QQ-153/ RR-101/ SS-183/TT-172	2,285.42	52.41	119,778.86	11,977.89
1004479	QQ-/ SS-189/ TT-181	20,011.02	52.41	1,048,777.56	104,877.76
1004486	SS-189/TT-180	51,471.00	52.41	2,697,595.11	269,759.51
OCTOBER				-	-
1004701	SS-225/TT-234	38.38	53.22	2,042.58	204.26
1004703	QQ-244/ SS-225/ TT-235	39,930.85	53.22	2,125,119.84	212,511.98
NOVEMBER				-	-
1004866	SS-246/TT-267	(0.02)	53.57	(1.07)	(0.11)
1004868	QQ-269/ SS-247/ TT-268	46,485.75	53.57	2,490,241.63	249,024.16
1004891	QQ-273/ SS-252/ TT-274	144,143.97	53.57	7,721,792.47	772,179.25
1004892	QQ-274/ SS-253/ TT-277	36,616.33	53.57	1,961,536.80	196,153.68
TOTAL				60,725,534.10	6,072,553.41

In view of the above findings, petitioner's claim for refund or issuance of tax credit certificate in the amount of Seventy Nine Million Six Hundred Thousand Seventy Six Pesos and 83/100 (P79,600,076.83) representing its erroneously paid final income taxes for the calendar year 2002 should be granted, less the prescribed and disallowed claims."

(Assailed Decision, pp. 5-16)

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 7, 2007 Decision and November 26, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the August 7, 2007 Decision and November 26, 2007 Resolution of the *CTA Second Division* in CTA Case No. 6923 entitled, "*Metropolitan Bank & Trust Company, petitioner vs. Commissioner of Internal Revenue, respondent*" are hereby **AFFIRMED *in toto*.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice