REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORIENT PACIFIC CAPITAL INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4113

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

5/28/92

D E C I S I O N

This case involves a claim for refund of excess withholding tax on interest income in the amount of P30,928.10 from October 15, 1984 to January 1985 allegedly erroneously computed at 20%, instead of the amended and reduced rate of 15% pursuant to Presidential Decree No. 1959.

The records reflect that petitioner, Orient Pacific Capital Investment Corporation, otherwise known as City Trust Investment Philippines, Inc., is a domestic corporation engaged in business as a non-bank financial intermediary which among others, arranges and syndicates credit facilities for various clients.

Sometime in 1984, as arranged by petitioner, Philippine American Life Insurance Company (Philam, for short) extended two (2) credit facilities to Mercury Drug Corporation (MDC, for short) in the amounts of P22.3 Million and P3.1 Million whereby payments by MDC of the amortizations and interests due were directly made to petitioner for the account of and subsequent remittance to Philam.

It appears that on the P22.3 Million credit facility petitioner withheld P138,958.04 as final withholding tax from the total interest income from deposit substitute in the amount of P694,790.10 for the period from September 27, 1984 to December 27, 1984. On the P3.1 Million credit facilitiy petitioner withheld as final withholding taxes in the amounts of P3,600.17; P3,724.32 and P3,178.08, all remitted to the Bureau of Internal Revenue, from the total interest income from deposit substitute in the amount of P18,000.86, as of November 27, 1984; P18,621.58 as of December 27, 1984 and P15,890.41 as of January 28, 1985, respectively.

On November 18, 1985, believing that it inadvertently and erroneously over withheld and remitted the final withholding taxes on interest income from deposit substitute of Philam, petitioner filed with the Bureau of Internal

Revenue a request for the refund in the amount of P30,928.00.

No action having been taken on the claim for refund and to obviate the tolling of the statute of limitation, petitioner filed with this Court the instant petitioner for review.

Respondent in his answer, denied most of the allegations of the petitioner and as special and affirmative defenses alleges, among others, that:

xxx xxx xxx

> "6. Petitioner must clearly show that its case is covered by Presidential Decree No. 1959;

xxx xxx xxx

> "10. In an action for tax refund, the taxpayer must show that the taxes paid were erroneously or illegally collected and failure to sustain said burden is fatal to the action for refund;"

xxx xxx xxx

The issue raised is whether or not petitioner is entitled to the refund of the amount of P30,928.10 as alleged excess of the final withholding tax on the interest income it paid from October 15, 1984 to January 1985, derived from the loan arrangement between Philam and MDC.

Petitioner contends that the amount claimed is refundable on the ground that the final withholding tax on the interest income paid from October 15, 1984 was allegedly erroneously computed at the straight 20% thereof, pursuant to Section 53(e)(1) of the National Internal Revenue Code, instead of the amended and reduced rate of 15% from October 15, 1984, pursuant to Presidential Decree No. 1959, effective on said date.

We disagree with petitioner.

Petitioner clearly misappreciated the facts and the applicable provisions of the statutes.

The phrase "deposit substitutes" is defined under Section 20(y) of the National Internal Revenue Code, as amended by Presidential Decree No. 1959, effective October 15, 1984, as follows:

> "(y) Deposit substitutes shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These promissory notes, repurchase agreements, certificates of assignment or participation and similar instrument and similar instrument with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: Provided, however, that only debt instruments issued for inter-bank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks

> and quasibanks shall not be considered as deposit substitute debt instruments."

It is expressly admitted by petitioner that the subject taxable income is "interest income derived by Philam from the loan arranged by petitioner in favor of Mercury Drug Corporation" (see Rollo, p. 91). Such interest income from a loan paid MDC shall be distinguished from interest on "deposit substitutes" which connote a different meaning. The distinction is essential because of the different tax treatment given to each. Interest income from an ordinary loan forms part of the gross income of the corporation and is subject to corporate income tax of 35% thereon, pursuant to Section 24 of the National Internal Revenue Code, while interest on deposit substitutes is subject to a final 15% withholding tax thereof, effective October 15, 1984.

Thus, although petitioner is correct in alleging that interest income falling due and paid from October 15, 1984 on deposit substitutes shall be computed at 15% thereof, a recomputation on that basis, as prayed for, is not warranted, considering the conclusion reached that the subject intrest income was earned from an ordinary loan transaction subject to 35% corporate income tax.

It must also be stressed that respondent in his answer and by way of special and affirmative defenses, raised several issues, indicated earlier. Therefore, petitioner must clearly show that its case is covered by Presidential Decree No. 1959 and to show that the taxes paid were erroneously or illegally collected, but petitioner failed to sustain its burden. And, although his case has been submitted for decision based on the pleadings, respondent could not be deemed to have admitted all the allegations of petitioner for there is nothing to indicate such admission (Please see **Commissioner of Internal Revenue v. Mitsubishi Metal Corporation, Et. al.,** G.R. Nos. 54908 & 80041, February 2, 1990).

WHEREFORE, that petition for review in the above-entitled case is hereby DISMISSED without prejudice to a reassessment of the 35% corporate income tax due on the subject interest income received by Philam, if the same has not yet prescribed.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manial, May 28, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

~~STELLA DADIVAS-FAR~~RALES
Acting Associate Judge

CERTIFIFATION

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