REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BANK OF THE PHILIPPINE ISLANDS,
Respondent.

EB No. 294
(CTA Case No. 6833)
Present:
ACOSTA, *P.J.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

OCT 24 2007

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DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated March 15, 2007 in CTA Case No. 6833 entitled, "*Bank of the Philippine Islands, petitioner vs. Commissioner of Internal Revenue, respondent*" ordering Petitioner-CIR to refund or issue a tax credit certificate to Respondent-BPI in the amount of P547,046.72 representing double remittance of withholding tax on the compensation income of Ms. Emma Lopez for the taxable year 2001, and from

[1] CTA En Banc Rollo., pp. 7-15.
[2] Annex "A", Petition for Review, CTA En Banc Rollo., pp. 19-26.

the Resolution[3] (*Assailed Resolution*) dated June 18, 2007 denying Petitioner-CIR's Motion for Reconsideration.

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

"The Bank of the Philippine Islands ('petitioner') is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the banking business with principal office located at the BPI Building, Ayala Avenue, corner Paseo de Roxas Streets, Makati City.

The Commissioner of Internal Revenue ('respondent') is authorized, among others, to decide and approve refunds of erroneously or excessively paid internal revenue taxes under the 1997 National Internal Revenue Code ('NIRC'), as amended, with office address at the Bureau of Internal Revenue ('BIR') National Office Building, Agham Road, Diliman, Quezon City.

On December 28, 1994, Far East Bank and Trust Company ('FEBTC') forged a Trust Agreement with American Express International, Inc. - Travel Related Services ('AMEX') for the creation of a retirement fund which would benefit the employees of American Express in the Philippines. The parties stipulated that FEBTC as trustee shall receive, hold, invest, administer and distribute the fund.[4]

On March 23, 2000, the Bangko Sentral ng Pilipinas ('BSP') approved the Articles of Merger and Plan of Merger executed between petitioner and FEBTC.[5] As a result of the merger, FEBTC ceded its rights and obligations in favor of petitioner as the surviving entity,[6] including its commitment as trustee pursuant to the Trust Agreement.

A certain employee of AMEX in the person of Ms. Emma Lopez resigned/ retired from her employment effective December 31, 2001 and received the corresponding separation/retirement pay. Being the trustee and withholding agent, petitioner collected and remitted the amount of P547,046.72 representing income tax due on the separation/retirement pay of Ms. Lopez. Petitioner later discovered that AMEX earlier advanced, withheld and remitted to the BIR income tax on compensation of Ms. Lopez in the amount P476,141.87.[7]

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[3] Annex "B", Petition for Review, CTA En Banc Rollo., pp. 27-28.
[4] Exhibit A, Petition for Review, CTA Division Rollo, pp. 162-167.
[5] Exhibit T, CTA Division Rollo, p. 211.
[6] Exhibit R, CTA Division Rollo, p. 204.
[7] CTA Division Rollo, pp. 2-3 and Exhibits 6 and 7, pp. 303-304 and 305-306, respectively; Exhibit BB, p. 228.

> The double remittance of income tax withheld on the separation/retirement benefit of Ms. Lopez prompted petitioner, through its Asset Management and Trust Group, to file with the BIR Large Taxpayer's Division, a request for a refund/tax credit in the amount of P547,046.72 on March 7, 2002.[8]
>
> On December 9, 2003, petitioner appealed by way of a Petition for Review before this Court due to respondent's failure to immediately act on its claim for refund or tax credit.
>
> In a letter dated December 16, 2003, the respondent through Deputy Commissioner OIC of the Large Taxpayer's Service Division Estelita C. Aguirre, denied petitioner's request for tax refund due to the latter's failure to submit the 2001 Income Tax Return of Ms. Lopez.[9]
>
> After both parties have presented their testimonial and documentary evidence, this case was submitted for decision on September 21, 2006 without any memorandum filed by the respondent."

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[10] on March 15, 2007, the dispositive portion of which reads as follows:

> ***"WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P547,046.72** representing double remittance of withholding tax on the compensation income of Ms. Emma Lopez for the taxable year 2001.*
>
> ***SO ORDERED."***

Not satisfied with the above decision, Petitioner-CIR filed a "Motion for Reconsideration[11]" on April 11, 2007. A Comment/Opposition to Petitioner's Motion for Reconsideration)[12] was filed by Respondent-BIR on May 16, 2007.

[8] Par. 3, Stipulated Facts, CTA Division Rollo, p. 110.
[9] CTA Division Rollo, Exhibit 8, p. 307.
[10] Ibid.
[11] CTA First Division Rollo., pp. 333-337.
[12] CTA First Division Rollo., pp. 340-344.

In the *Assailed Resolution*[13] dated June 18, 2007, the *CTA Second Division* denied Petitioner-CIR's "Motion for Reconsideration" for lack of merit.

On July 11, 2007, Petitioner-CIR filed a "Motion for Extension of Time to File Petition for Review[14]" with the *CTA En Banc*. In a Resolution[15] dated July 12, 2007, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from July 12, 2007 or until July 27, 2007, within which to file a Petition for Review. On July 27, 2007, Petitioner-CIR filed the instant Petition for Review[16] with the *CTA En Banc*, praying that the Decision dated March 15, 2007 and the Resolution dated June 18, 2007 in CTA Case No. 6833 entitled, "*Bank of the Philippine Islands, petitioner vs. Commissioner of Internal Revenue, respondent*" be reversed and set aside and another one be rendered denying the claim for refund.

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

WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND/TAX CREDIT IN THE AMOUNT OF P547,046.72 ALLEGEDLY REPRESENTING DOUBLE REMITTANCE OF WITHHOLDING TAX ON COMPENSATION FOR TAXABLE YEAR 2001.

The CTA *En Banc* promulgated a Resolution[17] on August 9, 2007, ordering the Respondent-BPI to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. As per records of the case, counsel for the respondent received the August 9, 2007 Resolution on August 16, 2007. After the expiration of the period given to the respondent, no Comment was filed.

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[13] Ibid.
[14] CTA En Banc Rollo., p. 1-3.
[15] CTA En Banc Rollo., p. 5.
[16] Ibid.
[17] CTA En Banc Rollo., p. 33-34.

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.

Petitioner-CIR argues that *"during the trial of this case, the remittance of petitioner (sic) Ms. Lopez's withholding taxes is the only established fact. Unfortunately, respondent was never able to prove through credible and competent evidence that AMEX remitted the withholding taxes due from Emma M. Lopez for the taxable year 2001. Therefore, petitioner's (sic) claim of double remittance of withholding taxes should not have been sustained."*

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

> *The parties do not dispute the fact that the creditable income taxes were withheld and remitted in the amounts of P547,046.72 and P476,141.87 to the BIR by petitioner and AMEX, respectively, on the same compensation received by Ms. Emma M. Lopez for the taxable year 2001. Respondent does not dispute either that the creditable income tax of P547,046.72 was erroneously charged by petitioner against Ms. Emma Lopez. What is put to issue is whether or not Ms. Lopez utilized both the creditable withholding taxes of P547,046.72 and P476,141.87 reflected in the Certificates of Income Tax Withheld on Compensation issued by petitioner and AMEX, respectively, for taxable year 2001.*
>
> *Petitioner asserts that the proffered documentary evidence identified as Exhibits 'A' to 'Z', 'AA' to 'CC' sufficiently establish its entitlement to a refund or tax credit in the amount of P547,046.72, namely: the Trust Agreement dated December 28, 1994; Monthly Remittances of Income Taxes Withheld on Compensation of petitioner and AMEX; verified Certificate of Income Tax Withheld on Compensation issued by petitioner and AMEX; petitioner's Annual Information Returns of Income Taxes Withheld on Compensation Income and Final Withholding Taxes; Employer's Certificate of Compensation Payment of Tax Withheld of Ms. Lopez; and the 2001 Annual Income Tax Return of Ms. Lopez.*

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Respondent, on the other hand, denied petitioner's claim due to its failure to submit the Income Tax Return of Ms. Emma Lopez for taxable year 2001 despite several notices. According to the respondent, the 2001 Income Tax Return of Ms. Emma Lopez is necessary to determine if both the tax withheld per Certificates of Income Tax Withheld on Compensation issued by petitioner and AMEX were claimed or utilized by Ms. Emma Lopez.

A scrutiny of the 2001 Annual Income Tax Return filed by Ms. Emma M. Lopez on April 15, 2002[18] *discloses the following details:*

Gross Taxable Income	P1,638,318.33
Less: Total Personal & Additional Exemptions	41,000.00
Taxable Income	P1,597,318.33
Tax Due	P 476,141.87
Less: Tax Withheld per BIR Form No. 2316	476,141.87
Amount Still Due	P - 0 - -

Clearly, from the aforesaid return, only the amount of P476,141.87 was actually due from the compensation received by Ms. Emma Lopez from AMEX for taxable year 2001 and that the said income tax liability was paid by Ms. Emma Lopez by utilizing only the creditable withholding taxes reflected in the certificate issued by AMEX. Thus, the creditable withholding tax of P547,046.72 remitted by petitioner to the BIR on the same compensation income received by Ms. Emma Lopez for the taxable year 2001 constitutes erroneously paid tax which the respondent must refund or credit provided the said erroneously paid tax is being claimed within the period allowed by law. To quote:

> *SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –*
>
> *x x x*
>
> *(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are*

[18] Exhibit X, CTA Division Rollo, p. 217.

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> *returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use or 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.*
>
> *SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress. 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 therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears to have been erroneously paid.*

And in disposing of the sole issue raised by the Petitioner-CIR in the instant Petition for Review which, records show, is the same issue Petitioner-CIR stated in its Motion for Reconsideration[19] filed with the *CTA Second Division*, the Court, held:

> *"Contrary to respondent's (Petitioner-CIR) argument, petitioner (Respondent-BPI) efficiently proved that it remitted the amount of P547,046.72 to the Bureau of Internal Revenue (BIR). The very proof of this is none other than petitioner's (Respondent-BPI) Monthly Remittance Return of Income Taxes Withheld on Compensation (Exhibit 'C' and submarkings) showing that the taxes withheld- which included*

[19] Ibid.

P547,046.72 pertaining to Emma Lopez's- were actually remitted to the BIR. Xxx xxx xxx."

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed March 15, 2007 Decision and June 18, 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 March 15, 2007 Decision and June 18, 2007 Resolution of the *CTA Second Division* in CTA Case No. 6833 entitled, "*Bank of the Philippine Islands, 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

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C E R T I F I C A T I O N

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