REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus - C.T.A. Case No. 3171

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

11/8/93

D E C I S I O N

This case is a claim for refund in the amount of ₱292,230.99 allegedly "representing the excess remittance or overpayment of the 35% transaction tax on the interests from preterminated promissory notes"(see Prayer, Petition for Review, p.3) filed on November 27, 1980.

Petitioner is a commercial banking corporation duly organized and existing in accordance with the laws of the Philippines.

During the period between October 28, 1978 and September 12, 1980, in the ordinary course of banking business, petitioner issued several promissory notes/commercial papers in the primary market as money market instruments against placements to fall due on their respective maturity dates.

After the dates of the issuance of said promissory notes/commercial papers, petitioner paid to the Bureau of Internal Revenue the required 35% transaction tax in the amount of P1,179,942.11 due on the total reported interests thereof amounting to P3,371,264.88 corresponding to their respective full terms. Prior, however, to their maturity dates, the money market placements for which the promissory notes were issued were withdrawn in full and the said promissory notes were preterminated likewise on different dates so that the total interests paid thereon amounted only to P2,536,319.19 and the transaction tax due therefrom should only be P887,711.72. Thus, the remittance of the 35% transaction tax on the interests thereon resulted, according to the petitioner, to an overpayment in the amount of P292,230.99.

Hence, this claim for refund.

The resolution of this case hinges on the issue of: whether or not transaction tax is a business tax or an income tax. If it is a business tax, then herein petitioner may be entitled to its claim for refund, otherwise, the issue is whether or not it has personality in bringing the present suit for being a mere withholding agent and not the taxpayer.

The issue of transaction tax has already been resolved by this Court more than a decade ago and has been affirmed in toto by the Supreme Court. In the case of Western Minolco Corporation vs. Commissioner of Internal Revenue, L-61632 Aug. 16, 1983, 124 SCRA 121, the High Court said thusly:

> As correctly ruled by the respondent Court of Tax Appeals;
>
> > Accordingly, we need not and do not think it necessary to discuss further the nature of the transaction tax more than to say that the incipient scheme in the issuance of Letter of Instructions No. 340 on November 24, 1975 (O.G. Dec.15, 1975), i.e., to achieve operational simplicity and effective administration in capturing the interest-income 'windfall' from money market operations as a new source of revenue, has lost none of its animating principle in parturition of amendatory Presidential Decree No. 1154, now Section 210(b) of the Tax Code. The tax thus imposed is actually a tax on interest earnings of the lenders or placers who are actually the taxpayers in whose income is imposed. Thus, 'the borrower withholds the tax of 35% from the interest he would have to pay the lender so that he (borrower) can pay the 35% of the interest to the Government.' (President Marcos, Times Journal, June 17, 1977 cited in Respondent's Memorandum, p. 6) x x x. Suffice it to state that the broad concensus of fiscal and monetary authorities is that "even if nominally, the borrower is made to pay the tax, actually, the tax is on the interest earning of the

> immediate and all prior lenders/placers of the money. 'x x x." (Rollo, pp. 36-37)

> The 35% transaction tax is an income tax on interest earnings to the lenders or placers. The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon the petitioner. In other words, the petitioner who borrowed funds from several financial institutions by issuing commercial papers merely withheld the 35% transaction tax before paying to the financial institutions the interest earned by them and later remitted the same to the respondent Commissioner of Internal Revenue. The tax could have been collected by a different procedure but the statute chose this method. Whatever collecting procedure is adopted does not change the nature of the tax. (underscoring supplied; see also Marinduque Mining and Industrial Corp. vs. Efren I. Plana, Commissioner of Internal Revenue , CTA Case No. 3019, March 27, 1981)

The petitioner of the above mentioned case even further argued that the 35% transaction tax is a business tax because it is imposed under Title V, entitled "Taxes on Business" and classified specially under Chapter II, entitled "Tax on Business". However, the High Court ruled that:

> The location of the 35% tax in the Tax Code does not necessarily determine its nature. Again, we agree with the Solicitor General that the legislative body must have realized later that the subject tax was inappropriately included among the taxes on business because, Section 210 of the Tax Code has been repealed by Presidential Decree No. 1739 which now imposes a tax of 20% on interests from deposits and yields from deposit substitutes such as commercial

> papers issued in the primary market as principal instrument and provides for them in Section 24 (cc) under Chapter III, Tax on Corporations, Title II - Income Tax. (ibid)

Based on the above jurisprudence, this case should have been dismissed for lack of legal interest on the part of the Petitioner to bring an action to claim for refund.

HOWEVER, the impending death of the Petitioner's cause was saved by the recent case of Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, (December 2, 1991, 204 SCRA 377) wherein the Supreme Court en banc reconsidered Its Second Division's decision that the withholding agent (P&G Phil.) has no capacity to bring suit on behalf of its principal (P&G USA) which is the proper party in interest in its claim for refund. Said the Court, through its eminent Justice Feliciano:

xxx xxx xxx

> "2. The question of the capacity of P&G-Phil. to bring the claim for refund has substantive dimensions as well which, as will be seen below, also ultimately relate to fairness.
>
> Under Section 306 of the NIRC, a claim for refund or tax credit filed with the Commissioner of Internal Revenue is essential for maintenance of a suit for recovery of taxes allegedly erroneously or illegally assessed or collected:

> "Sec. 306. *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 excessive or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue;* 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 begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: xxx." (Italics supplied)

Section 309(3) of the NIRC, in turn, provides:

> "Section 309. Authority of Commissioner to Take Compromises and to Refund Taxes. - The Commissioner may:
>
> xxx xxx xxx
>
> (3) credit or refund taxes erroneously or illegally received, xxx. *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." (As amended by P.D. No. 69) (Emphasis supplied)

Since the claim for refund was filed by P&G-Phil., the question which arises is: is P&G-Phil. a "*taxpayer*" under Section 309(3) of the NIRC? The term "*taxpayer*" is defined in our NIRC as referring to "*any person subject to tax* imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is *directly and independently liable* for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.

A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegaly collected from him.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

"*The law sets no condition for the personal liability of the withholding agent to attach.* The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, *the* *withholding agent is constituted the agent of both the Government and the taxpayer.* With respect to the collection and/or withholding of the tax, he is the Government's agent. *In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.*" (Italics supplied)

If, as pointed out in *Philippine Guaranty*, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim. This implied authority is especially warranted where, as in the instant case, the withholding agent is the *wholly owned subsidiary of the parent-stockholder* and therefore, *at all times, under the effective control of such parent-stockholder.* In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

We believe that, even now, there is nothing to preclude the BIR from requiring P&G-Phil. to show some written or telexed confirmation by P&G-USA of the subsidiary's authority to claim the refund or tax credit and to remit the proceeds of the refund, or to apply the tax credit to some Philippine tax obligation of, P&G-USA, *before actual payment of the refund or issuance of a tax credit certificate.* What appears to be vitiated by basic unfairness is petitioner's position that, although P&G-Phil. is directly and

> personally liable to the Government for the taxes and any deficiency assessments to be collected, the Government is not legally liable for a refund simply because it did not demand a written confirmation of P&G-Phil.'s implied authority from the very beginning. A sovereign government should act honorably and fairly at all times, even *vis-a-vis* taxpayers.
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Underscoring supplied)

Furthermore, Petitioner has proven by the evidences presented the various transactions upon which interest were earned and the corresponding withholding taxes were paid to the Bureau of Internal Revenue. However, this Court notices that several taxes were paid from November 6, 1978 to November 24, 1978 in the total amount of P11,890.37. Considering, that the instant Petition for Review was filed on November 27, 1980, the claim for refund involving this amount has already prescribed for having been filed beyond the two-year period required under Section 292 (now Section 230) of the National Internal Revenue Code. The refundable amount is hereby recomputed as follows:

Total Interest Reported	P3,371,264.88	
35% Transaction Tax Remitted		P1,179,942.71
Less: Actual Interest Paid	2,536,319.19	
35% Transaction Tax Due		887,711.72
Difference	P 834,945.69	292,230.99
Less: Amount Prescribed		11,890.37
Refundable Amount		P 280,340.62

WHEREFORE, in all the foregoing, the Respondent is hereby ORDERED to REFUND the amount of P280,340.62 to the Petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 8, 1993

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

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

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