REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENPRES HOLDINGS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6010

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 02 2001

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DECISION

This is a petition seeking for the issuance of a tax credit certificate in the amount of P32,525,390.63 allegedly representing overpaid withholding tax on interest payment made by Petitioner to a corporation which is a resident of the United States of America.

The facts of the case are as follows:

Petitioner is a corporation duly formed and existing under and by virtue of the laws of the Philippines, with principal offices at the 4th Floor, Benpres Building, Meralco Avenue corner Exchange Road, Pasig City.

In 1998, Petitioner offered and issued promissory notes ("Notes", for brevity) in the principal amount of US$150,000,000.00, maturing in the year 2002. Said Notes were issued in unit denominations of US$1,000.00 and subject to and entitled to the benefit of an indenture between the Petitioner and the trustee, Morgan Guaranty Trust Company of

New York. The Notes were listed on the Luxembourg Stock Exchange and designated as eligible for trading on the PORTAL System. They were issued at 99.514% of their face value and earn interest at 7.875% per annum, payable in two equal semi-annual installments commencing on December 1997. Upon maturity, Petitioner would redeem the Notes at 100% of the face value thereof.

On December 19, 1997, Petitioner made its initial interest payment on the Notes in the total amount of US$5,906,250.00, which interest was made payable to Morgan Guaranty Trust Company of New York (Annex A, Petition for Review). On February 10, 1998, Petitioner remitted withholding taxes corresponding to twenty percent (20%) of the grossed-up amount of the interest payments on the said Notes amounting to P58,545,703.13 (Annex B, Petition for Review).

On May 5, 1998, however, the Bureau of Internal Revenue (BIR), in response to Petitioner's counsel's letter of August 8, 1997, issued BIR Ruling 52-98, stating that the Notes qualify as a public issue of bonds or bonded indebtedness; thus, interest income derived from the Notes by corporate residents of countries which have a tax treaty with the Philippines shall be subject to the tax rate provided in the said treaty (Annex C, Petition for Review).

Hence, on April 20, 1999, on the strength of the aforesaid ruling and the RP-US Tax Treaty which provides for a preferential 10% tax rate on interest payments on public issues of bonded indebtedness, Petitioner, through counsel, filed a letter-request for the refund or in the alternative, issuance of a Tax Credit Certificate in the amount of

P32,525,390.63, which amount represents overpayment of withholding tax on the interest payment on the notes.

As there was no action on the part of herein Respondent and the two-year prescriptive period was about to lapse, the instant petition was filed on February 10, 2000.

Respondent, in his Answer filed on March 21, 2000, raised the following Special and Affirmative Defenses:

> "5. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 6. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

On June 23, 2000, this Court, acting on the "Joint Motion" filed by both parties on June 20, 2000, alleging that on the basis of their "Joint Stipulation of Facts and Issues" filed on June 7, 2000, as well as the records of the case, there are no issues of facts and that the sole issue to be resolved in this case "is a purely legal question," resolved to grant the said motion (see page 85, CTA records). Thus, the issue We are tasked to resolve is solely legal: Whether, under BIR Ruling 52-98 and the RP-US Tax Treaty, the interest payments made by the Petitioner should be taxed at 10% or at 20%.

There is no dispute with respect to the nature of the Notes issued by Petitioner. In fact, under BIR Ruling 52-98, it was no less than the then Commissioner of Internal Revenue, Liwayway Vinzons-Chato, who ruled that since the notes will be used in a particular registered form, indicating therein the undertaking of Petitioner to pay 100% of the face value of the Notes on 2002 as well as to pay interest at the rate of 7.875% per annum, payable in two equal semi-annual installments, the Notes are considered as a bonded indebtedness. And considering further that the Notes will be offered to interested investors/buyers which must be an institutional buyer, aside from the fact that the Notes will be deposited with a custodian for the Depository Trust Company and Notes issued outside the US will also be held through Morgan Guaranty Trust Company of New York, Brussels office; and listed in the Luxembourg Stock Exchange, and designated as eligible for trading in the PORTAL Systems of the National Association of Securities Dealers, Inc., the Notes qualify as a public issue of bonds or bonded indebtedness (see pages 12 to 18, CTA records).

Therefore, considering that the Notes qualify as a public issue of bonds or bonded indebtedness, and since there exists a tax treaty between the Philippines and the United States, this Court is left with no recourse but to apply the law. Under Article 12, Paragraph 3 of the RP-US Tax Treaty, interest derived by a resident of one of the Contracting States from sources within the other Contracting State with respect to public issues of bonded indebtedness shall not be taxed by the other Contracting State at a rate in excess of 10 per cent of the gross amount of such interest, and We quote:

Article 12
Interest

3. Interest derived by a resident of one of the Contracting States from sources within the other Contracting State with respect to public issues of

bonded indebtedness shall not be taxed by the other Contracting State at a rate in excess of 10 percent of the gross amount of such interest

Verily, applying BIR Ruling 52-98 and the RP-US Tax Treaty, the interest payment made by the Petitioner should be taxed only at 10%. Th ere being an overpayment made to the Bureau of Internal Revenue due to mistake, the same must then be returned to the taxpayer.

WHEREFORE, in view of all the foregoing, the Court finds the instant petition meritorious and in accordance with law. Accordingly, RESPONDENT is hereby **ORDERED** to **ISSUE** a tax credit certificate in favor of Petitioner in the amount of P32,525,390.63 representing overpayment of withholding tax on interest made by the latter to a corporation which is a resident of the United States of America.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge