REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS, as Trustee of the PAL Pilot's Retirement Benefit Plan,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 4455

Promulgated:
JUL 11 1998

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DECISION

Elevated before this Court is petitioner's administrative claim for refund with respondent's Bureau in the amount of P5,403,369.44 allegedly representing the 20% final tax withheld from the income and/or yield earned by the Philippine Air Lines (PAL) Pilot's Retirement Fund ("Fund" for brevity), from its investments in treasury bills for the years 1988 and 1989.

Petitioner is a commercial banking corporation organized and existing under and by virtue of Philippine laws with specific authority to act as a trustee and to engage in trust functions and activities. It is the duly appointed trustee of the aforesaid Fund set up by the Philippine Air Lines, Inc. in accordance with the PAL Pilot's Retirement Benefit Plan ("Plan" for short).

The antecedent facts are as hereunder stated.

On September 12, 1973, the Plan was approved and qualified as a reasonable benefit plan by the respondent's Bureau pursuant to the provisions of Republic Act No. 4917, as implemented by Revenue Regulations No. 1-68. As such, the Plan enjoyed the benefits and privileges provided for by said Act, one of which is the exemption from income tax of the earnings that may be derived by the Fund from its investments (Exh. "B").

In 1988 and 1989, petitioner, acting as trustee, allegedly deposited, invested and reinvested the assets of the Fund in savings and time deposits, money market placements, and in securities such as treasury bills, with the various banking and financial institutions, from which the Fund earned income.

The present controversy arose when the said banking and financial institutions withheld the final tax of 20% (not 15% as alleged in the Petition and written claim, see Exhs. "H" to "H-33" and "I" to "I-17") from the income and/or yield derived by the Fund during the years above-mentioned. The respective income and taxes withheld are as follows:

Year	Income	Tax Withheld
1988	P13,930,591.93	P2,786,120.34
1989	13,087,420.39	2,617,249.10
TOTAL	P27,018,012.32	P5,403,369.44

Consequently, petitioner filed a written claim for refund with the respondent on May 15, 1990, stating that the withholding and collection of the 20% final tax from the income of the Fund were erroneous and/or illegal as the Fund is fully exempt from income tax.

Petitioner asseverated on the exemption of the Fund from income tax as provided in its duly approved and qualified Plan and added the following argument in its written claim, to wit:

x x x

> In a case decided by the Court of Tax Appeals (CTA) on 16 December 1986 (GCL Retirement Fund vs. the Commissioner of Internal Revenue, C.T.A. Case No. 3888), involving a petition of a tax-exempt retirement trust fund, for the refund of taxes withheld from the income derived from "money placement and treasury bills", similar in nature to the ones subject of the instant claim for refund, the CTA upheld the position of petitioner that:
>
> > "xxx. The interest income therefore of the petitioner from money placement and treasury bills are not subject to the 15% final tax".
>
> The CTA ordered the refund to petitioner of the taxes withheld from the interest income/yield derived by it from "money placement and treasury bills."

x x x

(Annex "E" of Petition, p. 26, CTA records)

On May 16, 1990 or a day later, petitioner filed the instant petition for review. It invokes the impending lapse of the two-year prescriptive period for it to be able to commence judicial proceedings for the recovery or refund of tax payments as provided under Section 230 of the Tax Code, and the continued pendency of its claim with the respondent as the bases of its action to seek immediate remedy.

Hence, this appeal.

Petitioner reasserts its stance ***a quo.*** Respondent on the other hand, contends in her Answer the following allegations, namely:

SPECIAL AND AFFIRMATIVE DEFENSES

> 8. The herein taxes sought to be refunded are deemed to have been collected and paid in accordance with law and existing BIR regulations.
>
> 9. Contrary to petitioner's contentions, the exemption from withholding tax on interest from bank deposits and yield from deposit substitutes previously granted under Section 21(d) and 24(cc) both of the Tax Code (not under R.A. 4917 and Section 54 (b) of the Tax Code) has already been withdrawn by P.D. No. 1959 which took effect on October 15, 1984.
>
> 10. The Decision of this Honorable Court in C.T.A. Case No. 3888, entitled "GCL Retirement Plan, etc. v. Commissioner of Internal Revenue" cited and relied upon by the petitioner is under appeal and still under review by the Supreme Court in G.R. No. 95022.

11. An action for refund of taxes will not prosper unless the taxpayer sustains his burden to show that the taxes paid were erroneously or illegally collected.

12. It is likewise the burden of the petitioner to show that it has complied with the provisions of Sections 204 and 230 of the 1988 Tax Code.

13. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. v. CIR, 67 SCRA 351).

Records reveal that herein case was dismissed for non-appearance and lack of interest on the part of the petitioner to prosecute its appeal per Resolution dated June 21, 1991, but upon a timely motion for reconsideration seeking the Court's leniency, the case was eventually set for further hearings (Resolution dated August 22, 1991). Much later, this Court granted petitioner's manifestation to file a motion for judgment on the pleadings. Upon a review of its memorandum thereto, however, this Court denied the motion due to insufficiency of facts and the need to undergo a trial on the merits in order to determine the truth (Resolution dated October 14, 1992). In a subsequent Resolution dated August 10, 1993, this Court again denied petitioner's second motion for reconsideration on the same subject matter and ordered petitioner to show proof as to the actual payment and remittances of the withholding taxes.

After several more hearings, motions for postponement and extensions and issuance of subpoenas, this Court had the opportunity at last to determine petitioner's formal offer of evidence filed on April 25, 1995, or nearly five years from the filing of the instant petition. This Court, taking into consideration respondent's Comment and/or Objection thereto, admitted all the exhibits offered by the petitioner subject to it's final evaluation and appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

Respondent, on her part, did not bother to present any evidence in support of her case, after noting that there was no report of investigation on petitioner's claim for refund undertaken by her office. She thereupon submitted this case for decision based on the legal issues involved after the filing of her memorandum (Minutes , dated November 20, 1995; p. 449, CTA records). As it turned out, petitioner filed its memorandum on January 19, 1996. Respondent however failed to file hers within the time given by the Court (Order dated March 29, 1996).

The issues confronting Us are:

1) Whether the tax exemption of the Fund granted by virtue of R.A. No. 4917 has been revoked by P.D. 1959; and

2) Whether the Fund is entitled to the refund based on the evidence on record.

Anent the first issue, it is worthwhile to note that the decision of this Court in GCL Retirement Plan, etc. vs. Commissioner of Internal Revenue, CTA Case No. 3888 had already been upheld in the case of **Commissioner of Internal Revenue vs. Court of Tax Appeals and the GCL Retirement Plan (207 SCRA 487 [1992])**.

In said case, the Honorable Supreme Court stated thusly:

> "In so far as employees' trusts are concerned, the foregoing provisions should be taken in relation to then Section 56 (b) [now 53 (b)] of the Tax Code, as amended by Rep. Act No. 1983, supra, which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and is repeated hereunder for emphasis:
>
> > "Section 56. *Imposition of Tax.* -- (a) *Application of Tax.*-- The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.
> >
> > "(b) *Exception.*-- The tax imposed by this Title shall not apply to employees' trust which forms part of a pension, stock bonus or profit sharing plan of an employer for the benefit of some or all of his employees x x x."
> >
> > The tax-exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs from the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trusts for tax exemption.

And rightly so, by virtue of the **raison de'etre** behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in Rep. Act No. 1983, Section 56 (b), was conceived in order to encourage the formation and establishment of such private Plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder **together with the income of the pension trust** are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in **Commissioner of Internal Revenue vs. Visayan Electric Co., et al.**, G.R. No. L-22611, 27 May 1968, 23 SCRA 715); italics supplied.

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

Based on the above pronouncement, the issue presented by the respondent is now deemed moot and academic inasmuch as it has been succinctly passed upon with finality by the High Court. Legally speaking, petitioner is deserving of its claim for refund.

What is left thus is the remaining issue of petitioner's entitlement to the refund as can be gathered from the evidence it has submitted.

We rule in the negative.

In support of its claim, petitioner offered in evidence, among others, the following exhibits, to wit:

1. PAL Pilot's Retirement Benefit Plan	Exh. "A"
2. Trust agreement between PAL, Inc., and BPI	Exh. "B"
3. BIR approval of the Plan	Exhs. "C", "C-1"
4. Written claim for refund filed with the BIR	Exhs. "F" to "F-2"
5. Report of Ms. Cynthia Makasiar, Senior Manager of BPI Trust and Investment Division on the Fund's Schedule of Taxes Withheld for 1988 and 1989	Exh. "D"
6. Certification of Mr. Eduardo Lim, Vice-President for Banking Operations Division, on BPI Trust and Investment Division's purchase of treasury bills on behalf of the Plan and on the collection of the 20% withholding tax on such bills	Exh. "G"
7. Schedule of Investments and Con-	Exhs. "H" to

firmation of Sale documents for the years 1988 and 1989	"H-33", "I" to "I-17"
8. Schedules and Certification on treasury bills purchased by BPI from the Central Bank of the Philippines and treasury bills sold by the BPI Treasury Operations to the BPI Trust and Investments Division	Exhs. "J" to "J-1", "K" to "K-1"
9. Copies of Acceptance of Bill Tenders issued by the Central Bank of the Philippines	Exhs. "L-1" to "L-13"
10. Certification on the Credit Advices covering the payment of internal revenue taxes on the income of the treasury bills in Exh. "K"	Exh. "M"

After a painstaking review of the above exhibits, this Court is constrained to deny petitioner's claim due to insufficiency of evidence.

Crucial to petitioner's claim is the actual proof of the indubitable participation of the Fund to the purchase of the treasury bills. Petitioner mainly relied on the certification of Mr. Eduardo Lim (Exh. "G", *supra*) to establish the proposition that the Plan (should be "Fund") purchased treasury bills through its trustee's BPI Trust and Investment Division, and that the latter charged the Fund of the 20% withholding tax it priorly paid to the BPI Treasury for said purchase. We are not persuaded.

As we have stated in the case of **Bank of the Philippine Islands, as trustee of various retirement**

funds vs. Commissioner of Internal Revenue, CTA Case Nos. 4898, 4900 to 4940 promulgated on October 11, 1995, proof of participation by the various retirement funds can only be established by a showing of the actual payment made by each of them. We quote:

x x x

> Indeed, as correctly posed by respondent, there is no evidence on record to pinpoint the fact that the assets of the various trust funds were actually used in the purchase of the treasury bills. What petitioner has proven is the transaction between the Treasury Department and Trust Department, but not the one between the Trust Department and the individual trust fund.
>
> Evidently, the deposit accounts of the trust funds will have to be debited in the purchase of the treasury bills and the corresponding receipt or acknowledgment, in any convenient form, will have to be issued as proof of payment. Petitioner must have documented or made entries on such transactions. x x x

Petitioner was not able to present any proof of direct payment as having been made by the Fund from its own deposit accounts. In transactions involving treasury bills, such proof of payment can easily be established by the *originals* of the cash vouchers, purchase tickets, fixed income securities placements, official receipts evidencing payment and debit-credit ledger entries of the Fund. Sadly, none of these were submitted.

Neither can we rely on the Confirmation of Sale documents (Exhs. "H-1" to "H-33" and "I-1" to "I-17", *supra*) which show the BPI Trust and Investment Division as the only indicated buyer therein. They do not reveal or even remotely suggest that the Fund was the real buyer, or that the purchase was for and in-behalf of the Fund. More so, when it is indicated that the purchase was for "various accounts" (Exhs. "H-2", "H-3", "H-5", "H-9", "H-15" to "H-18", "H-20", "H-21") that are nowhere in the records identified, and verified as to the extent of their participation in the total purchase amount stated in the Confirmation of Sale documents, except for the unitary averment of the petitioner that the Fund is a part thereof.

The preceding observations of this Court is properly highlighted by the respondent in the hearing of herein case on August 4, 1994. We quote:

CROSS EXAMINATION OF ATTY. DE LEON.

Q. Mr. Villaroya, in your capacity as the Report Specialist of the Bank of the Philippine Island Trustee of the PAL PILOTS' Retirement Benefit Plan in this case, how many plans are under the trustees of the Bank of the Philippine Islands?

A. There are lots of plan.

Q. Can you name some, Mr. Witness?

A. We have the Island Group Employees Retirement Plan, Ayala Groups Employees Retirement Plans and BPI Employees Retirement Plan.

Q. <u>In this partial schedule of withholding tax marked as Exhibit "I" for petitioner, from where can you determined that the amount invested as appearing in this schedule did come from fund of the PAL PILOTS' Retirement Benefit Plan?</u>

A. <u>There is computerized source documents for investment.</u>

Q. <u>But, there is nothing here that indicate that the fund used came from the PAL PILOTS' Retirement Benefit Plan?</u>

A. <u>There are some other documents which shows that there is investments.</u>

Q. <u>Where are those documents?</u>

A. <u>It is with our client.</u>

Q. What are those documents, Mr. Witness?

A. Placement order.

Q. So, these are the schedule of withholding tax which are not reflected on the actual buyer of this Treasury Bills?

A. It is reflected on the confirmation.

Q. What confirmation?

A. It is the confirmation of sale.

Q. <u>Will you please indicate to us what portion of confirmation would indicate the funds used came from the retirement plan of the PAL PILOTS' Retirement Benefit Plan?</u>

A. <u>Well, to get the supporting documents for this placement(sic).</u>

Q. So, theres nothing here?

A. BPI Trust under Investment Trust Plan. We only used one confirmation for various trust account, they are prorated on their investments.

Q. Now, under this financial schedule of withholding tax, there are corresponding P.Os. and confirmation receipts for the taxes allegedly withheld?

A. With this, it is only stated in the confirmation, the tax withheld which is included on the...

Q. No, I am asking you for the P.Os. and the Confirmation Receipts, where it was...

A. It is also stated in the purchase order.

Q. Where is that, Mr. Witness?

A. It is on our own file.

(TSN, August 4, 1994, pp. 29-32; Underscoring supplied)

Petitioner's witness when asked for the documents supporting the Confirmation of Sale papers could only say that the same is with "our client" or "on our own file". Lamentably, notwithstanding petitioner's power to produce said documents, it did not bother to present them before this Court. Consequently, we have no recourse but to disregard the Confirmation of Sale papers as they are not the best evidence obtaining (Section 3, Rule 130, Revised Rules of Court). In the same hearing above, respondent expressed her objection to petitioner's evidence, in this wise:

REDIRECT EXAMINATION

x x x

Q. You also mentioned there are also placement orders which are the basis for the investments to be made to the various trust accounts being handled by the Trust Investment of the BPI. My question Mr. Witness, did you check these placement orders before you prepared...

ATTY. DE LEON

Objection, Your Honors, the best evidence is their computerized ledger which is the basis of those.

JUDGE DE VEYRA

State your legal objection.

ATTY. DE LEON

Of this confirmation of sale, Your Honors.

JUDGE DE VEYRA

Sustained.

x x x

(Ibid, pp. 34-35)

In like manner, the Schedules of Withholding Tax on the purchase of the treasury bills (Exhs. "H-1" and "I-11") cannot substitute for the originals of the transactions evidencing actual participation of the Fund, absent any proof of their unavailability. The schedules are mere outlines or guides for better appreciation of the evidence submitted.

With the finding of this Court that the above-mentioned confirmation of sale documents are of no probative value to the issue at hand, the Schedules of Withholding Tax and certification of Mr. Lim have no leg to stand on and are simply treated as self-serving statements.

"It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority." (Insular Lumber Co. vs. CTA, 104 SCRA 721 and CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549)

WHEREFORE, in view of insufficiency of evidence necessary to support the claim of the petitioner, the instant **PETITION FOR REVIEW** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals