REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NIPPON LIFE INSURANCE COMPANY OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6348

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 12 2003

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DECISION

This Petition for Review involves a claim for refund in the amount of P12,272,781.91 allegedly representing erroneously withheld 20% final taxes on interest income and gain on sale of treasury bonds for the period February 1999 to January 2000.

The material antecedents are summarized as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the 21st Floor, Tower 2, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City, Metro Manila. It is authorized to engage in the business of life insurance by the Insurance Commission *(pars. 1 & 3, Stipulation of Facts)*.

As a company engaged in the business of life insurance, petitioner is required under the Insurance Code of the Philippines to invest in and purchase certain government securities during the course of its operations. These investments consist of bonds or other evidences of debt of the Philippine Government, its political subdivisions or instrumentalities, or of government-owned or controlled corporations and entities *(par. 4, Stipulation of Facts).*

On various dates from February 25, 1999 to March 31, 1999, petitioner purchased several long-term Fixed Rate Treasury Bonds (Bonds) from Hongkong and Shanghai Banking Corporation (HSBC), Rizal Commercial Banking Corporation (RCBC) and International Exchange Bank (Ibank) – in the secondary market, with the following details:

Date of Purchase	Selling Bank	Bond Series No.	Term/Coupon Rate	Issue Date	Issue/Face Amount
25 Feb 99	RCBC	PIBD1009B084	10 yrs./16.5%	25 Feb 99	P 50,930,000.00
25 Feb 99	RCBC	PIBD1009B084	10 yrs./16.5%	25 Feb 99	50,000,000.00
29 Mar 99	RCBC	PIBD1009B084	10 yrs./16.5%	25 Feb 99	280,000,000.00
29 Mar 99	iBank	PIBD1009B084	10 yrs./16.5%	25 Feb 99	66,000,000.00
31 Mar 99	HSBC	PIBD1009B084	10 yrs./16.5%	25 Feb 99	27,000,000.00
31 Mar 99	iBank	PIBD1009B084	10 yrs./16.5%	25 Feb 99	7,000,000.00

The Bureau of Treasury issued the Bonds originally to different investors on their respective issue dates and at their corresponding face values, with coupon interest payable semi-annually each year during the Bonds' terms until their maturity *(Exhibits A to T, V)*. At the time of petitioner's purchase, the Bonds offered yield rates which varied from their respective coupon interest rates. The *yield rate* refers to the market interest rate of the Bond, as affected by prevailing economic factors and conditions, and determines directly the present value of the Bonds on a particular date. Thus, Bonds which offered coupon interest payments that were higher than the Bonds' actual yield rates in the market at the time of the purchase were acquired by the petitioner at a *premium*, or a price *higher* that the face value of the Bonds.

The purchase price of the Bonds also included any accrued interest payable to the selling banks at the time of purchase. Thus, petitioner's total cash outlay to acquire the bonds from the different banks included the purchase price (at a premium, based on the lower yield rate of the bonds on the date of purchase) and any accrued interest payable to the selling banks at the time of purchase, *net* of 20% final withholding taxes on the purchase price and the accrued interest. On the different dates of purchase, petitioner computed the gross cost of purchasing the Bonds the corresponding amount of total taxes withheld on cost as follows:

Date of Purchase	Selling Bank	Issue/Face Amount	Gross Cost	Total Tax Withheld on Gross Cost
25 Feb 99	RCBC	P 50,930,000.00	50,999,661.64	P 7,125.23
25 Feb 99	RCBC	50,000,000.00	50,068,389.59	6,995.13
29 Mar 99	RCBC	280,000,000.00	300,912,502.74	2,759,565.50
29 Mar 99	iBank	66,000,000.00	70,898,037.82	647,074.92
31 Mar 99	HSBC	27,000,000.00	28,994,003.45	277,760.09
31 Mar 99	iBank	7,000.00	7,552,712.11	73,538.89
TOTAL				P3,772,059.76

The total withholding taxes on cost of P3,772,059.76 are broken down as follows (based on the purchase price and accrued interest on the Bonds on the date of purchase by the petitioner):

Date of Purchase	Selling Bank	Gross Cost	Gross Premium	Tax Withheld on Premium	Gross Accrued Interest	Tax Withheld on Interest
25-Feb-99	RCBC	P 50,999,661.64	P 76,786.87	P 7,125.23	-	-
25-Feb-99	RCBC	50,068,389.59	75,384.72	6,995.13	-	-
29-Mar-99	RCBC	300,912,502.74	19,308,734.90	1,886,898.83	P 4,363,333.33	P 872,666.67
29-Mar-99	Ibank	70,898,037.82	4,516,612.74	441,374.92	1,028,500.00	205,700.00
31-Mar-99	HSBC	28,994,003.45	1,826,263.54	188,660.09	445,500.00	89,100.00
31-Mar-99	Ibank	7,552,712.11	510,751.00	50,438.89	115,500.00	23,100.00
TOTAL				**P 2,581,493.09**		**P 1,190,566.67**

During the time that the bonds were in the possession of petitioner, it was able to collect interest income from the Bureau of Treasury on the four bonds acquired on March 29, 1999 and March 31, 1999, in the total amount of P31,350,000.00. A 20% final tax in the amount of P6,270,000.00 was withheld therefrom by the Bureau of Treasury.

On various dates from August 4, 1999 to January 10, 2000, petitioner sold the bonds to Hongkong and Shanghai Banking Corporation and Citibank. The tax withheld on the selling price amounted to P4,275,495.25 while the tax withheld on accrued interest totaled P5,499,346.42, thus:

Date of Sale	Buying Bank	Total Cash Proceeds	Gross Selling Price	Tax Withheld on Selling Price	Gross Accrued Interest	Tax Withheld on Interest
4-Aug-99	HSBC	P 58,277,690.40	P 55,818,991.55	P 510,520.15	P 3,711,523.75	P 742,304.75
27-Jul-99	HSBC	57,087,372.26	54,800,214.57	499,508.98	3,483,333.33	696,666.67
6-Jan-00	Citibank	113,166,658.93	109,082,985.10	719,659.50	6,004,166.67	1,200,833.33
6-Jan-00	Citibank	225,586,213.23	218,265,970.20	2,186,423.64	12,008,333.33	2,401,666.67
10-Jan-00	Citibank	41,838,114.16	40,365,997.14	359,382.98	2,289,375.00	457,875.00
TOTAL				**P 4,275,495.25**		**P 5,499,346.42**

On the basis of the foregoing transactions, the total final taxes alleged to have been withheld from petitioner's income from investing in the Bonds amounted to P12,272,781.91, computed as follows:

Withholding Taxes on Selling Price	P 4,275,495.25
Withholding Taxes on Accrued Interest Income	5,499,346.42
Withholding Taxes on Interest Income Earned on 25 August 1999	6,270,000.00
Subtotal	P16,044,841.67
Less: Tax Withheld on Premium	(2,581,493.09)
Tax Withheld on Accrued Interest Payable	(1,190,566.67)
Total Withholding Taxes	P12,272,781.91

On October 25, 1999, the BIR issued Ruling No. 166-99 and declared that interest income, yield or gain from the sale of bonds, debentures and certificates of indebtedness with maturities of more than five (5) years are excluded from gross income in accordance with Section 32(B)(7)(g) of the 1997 Tax Code and therefore exempt from the 20% final withholding tax on deposit substitutes. On January 7, 2000, the BIR issued Ruling No. 016-2000 and further reiterated its position on the non-taxability of interest income, yield or gain derived from bonds, debentures and other certificates of indebtedness with a maturity of more than five (5) years.

On the strength of the foregoing rulings, petitioner, on October 23, 2001, filed a written claim for refund with the Bureau of Internal Revenue, Revenue District Office No. 34, Manila, in the amount of P12,272,781.91 as erroneously withheld income tax on its investment in the Bonds *(par. 6, Stipulation of Facts)*.

As there was no action on the part of the respondent, petitioner was constrained to elevate its claim for refund to this court by way of a Petition for Review on October 24, 2001 in order to toll the running of the two-year prescriptive period.

On November 27, 2001, respondent filed his Answer and raised the following Special and Affirmative Defenses, to wit:

1. "Petitioner's alleged claim for refund is still subject to administrative investigation/examination;

2. Nonetheless, despite the documents attached or submitted by petitioner in support of its claim, the latter failed to establish the fact that the tax subject of the case at bar is refundable;

3. Petitioner's reliance on BIR Rulings Nos. 166-99 and 016-2000, respectively, as basis of its claim for refund is misplaced because the said rulings were issued by the Bureau of Internal Revenue in

favor of another company and not to the petitioner in this case. The facts and issues as represented by the applicants therein are entirely different from the facts and issues obtaining in the instant case;

4. Time and again the Honorable Supreme Court has consistently held that in tax refunds, the claimant has the burden of proof to establish the factual basis of his or her claim for tax refund or credit. After all, tax refunds, like exemptions, are construed strictly against taxpayer. Failure to prove the same is fatal to its claim for tax refund.

5. Finally, it is incumbent upon petitioner to prove that it has strictly complied with the governing rules pertinent in the recovery of tax or refund as explicitly provided for under Sections 204 (c) and 229 of the Tax Code.

The issues for this court's resolution were jointly stipulated by the parties to be as follows:

(a) Whether or not Petitioner purchased fixed-rate long term Treasury Bonds ("Bonds") with Series No. PIBD1009B084 from 25 February 1999 to 31 March 1999 from various banks in the secondary market;

(b) Whether or not Petitioner purchased the Bonds at a premium or a discount amounting to a total cash outlay of P509,425,307.35, which takes into account, among others, the withholding taxes on the purchase price amounting in part to P2,581,493.09, as a deduction from the amount paid to the selling banks;

(c) Whether or not Petitioner held on to the Bonds from the dates of purchase until various dates from 4 August 1999 to 10 January 2000 when the Bonds were sold to Citibank and Hongkong and Shanghai Banking Corporation ("HSBC");

(d) Whether or not during the foregoing period, specifically on 25 August 1999, Petitioner received interest income on the Bonds amounting to P31,350,000.00, net of P6,270,000.00 representing the 20% final tax imposed under the National Internal Revenue Code ("NIRC");

(e) Whether or not the Bureau of Treasury withheld the amount of P6,270,000.00 as 20% final withholding taxes from Petitioner's interest income on the Bonds during the entire holding period, and remitted such amount to the BIR;

(f) Whether or not Petitioner received a total of P495,956,048.98 from the sale of the Bonds to Citibank and HSBC which represent the gross selling price of the Bonds and the accrued interest income thereon on the date of the sale, net of deductions for withholding taxes from the foregoing, amounting to P4,275,495.25 and P5,499,346.42, respectively;

(g) Whether or not the administrative claim for refund and the Petition for Review were filed within the 2-year prescriptive period for recovery of taxes erroneously or illegally collected, prescribed under Section 229 of the NIRC;

(h) Whether or not the term "gains", as used in Section 32 (B) (7) (g) of the National Internal Revenue Code of the Philippines ("NIRC"), encompasses *all* forms of "income" derived from bonds, debentures and other certificates of indebtedness with a maturity of more than 5 years, including the interest income and yield derived from such long-term certificates of indebtedness, considering the connotation of the term "gains" in relation to the financial treatment of bonds, debentures, and other certificates of indebtedness;

(i) Whether or not interest income derived from the purchase of the Bonds with a maturity of more than five (5) years is exempt from the 20% withholding tax imposed under the NIRC;

(j) Whether or not BIR Rulings Nos. 166-99 and No. 016-2000 dated 25 October 1999 and 7 January 2000, respectively, are applicable in the instant case;

(k) Whether or not the total amount of P12,272,781.19 was withheld by the Bureau of Treasury from Petitioner's investments in the Bonds, and remitted to the BIR; and

(l) Whether or not Petitioner is entitled to the refund of P12,272,781.91 as taxes erroneously withheld by the Bureau of Treasury on Petitioner's investment in the Bonds.

As the above-enumerated issues are interrelated, we deem it proper to streamline them into two issues – the first involving the legal aspect and the other, the factual aspect of the case.

The legal issue besetting the case at bar is not one of first impression. In a number of cases decided by the court, the issue on whether or not interest income derived from investments in long-term treasury bonds is subject to the 20% final withholding tax has already been passed upon, to wit:

1. *Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6142, February 4, 2002;

2. *Malayan Reinsurance Corporation (formerly Eastern General Reinsurance Corporation) vs. Commissioner of Internal Revenue*, CTA Case No. 6252, July 24, 2002; Resolution dated November 19, 2002;

3. *Malayan Zurich Insurance Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6251, September 30, 2002;

4. *First Nationwide Assurance Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6253, October 3, 2002;

5. *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6228, December 4, 2002; and

6. *Malayan Insurance Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6243, December 16, 2002.

7. *Tokio Marine Malayan Insurance Co, Inc., (formerly Pan Malayan Insurance Corp) vs. Commissioner of Internal Revenue*, CTA Case No. 6254, January 13, 2003; and

8. *RCBC Savings Bank, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6341, May 5, 2003.

In the aforesaid cases, we have consistently ruled that only the gain from sale (as distinguished from interest) of bonds, debentures or other certificates of indebtedness with maturity of more than five years shall be exempt from income tax.

In its petition, petitioner cited BIR Ruling No. 166-99 dated October 25, 1999 and BIR Ruling No. 016-2000 dated January 7, 2000, to buttress its view that interest income from long-term Fixed Rate Treasury Bonds purchased in the secondary market with a maturity in excess of five years are exempt from the 20% withholding tax.

In BIR Ruling No. 166-99, issued on October 25, 1999 and addressed to Aegon Life Insurance (Philippines), Inc., respondent ruled that interest income or yields or gain from the sale of bonds, debentures and certificates of indebtedness with maturities of more than five (5) years are excluded from gross income in accordance with Section 32(B)(7)(g) of the 1997 Tax Code and therefore exempt from the 20% final withholding tax on deposit substitutes. BIR Ruling No. 166-99 states in pertinent part:

> "B. As a general rule, the interest income on currency bank deposit and <u>yield or other monetary benefit from these "deposit substitutes"</u> and similar arrangement derived by banks and non-bank financial intermediaries are being taxed at the final rate of 20% under Section 27(D)(1) of the 1997 Tax Code. However, Section 32(B)(7)(g) of the 1997 Tax Code, provides an exception, thus:
>
> **Section 32**. *Gross Income*
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> x x x x x x
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> (B) Exclusions from gross income. The following items shall not be included in gross income and shall be exempt from taxation under this Title.
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> x x x x x x
>
> (7) Miscellaneous items. –

x x x x x x

(g) Gains from the sale of bonds, debentures or other certificate of indebtedness. Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

The idea therefore, is to still treat bonds, debentures or other certificates of indebtedness as "deposit substitutes" the interest income, yield or gain derived therefrom subject to the 20% final tax under Section 27(D)(1) of the 1997 Tax Code, but exclude said interest income, yield or gain from the gross income if the bonds, debentures or the certificate of indebtedness have maturities of more than five (5) years. Conversely, only the income derived on these debt instruments with maturity of more than five (5) years shall be excluded from the gross income.

Furthermore, the term sale is not limited to the subsequent transfer of the instrument but to its <u>origination</u> and <u>issuance</u>, as well. Thus, from the time of its issuance, we should consider the "income" which is actually the amount coming to a person within a specified time, whether as payment for the services, <u>interest, or profit from investment</u>. Its usual synonyms being "gain", "profit", "revenue". *(Trefry v. Putnam, 116 N.E. 904, 907 227 Mass. 522, L.R.A. 1917F, 806." (Words & Phrases, Gain, page 11, Permanent Edition 18)*

BIR Ruling No. 016-2000, issued on January 7, 2000, confirmed its previous interpretation of Section 32(B)(7)(g). It states:

"A. Section 32 (B)(7)(g) of the Tax Code of 1997 otherwise known as the NIRC of 1997 provides that "Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years" are excluded from gross income, hence, exempt from income tax, effective January 1, 1998. Thus, if the maturity period of the bonds issued through the BTr will be <u>more than five (5) years</u>, the gains that may be derived therefrom by the bondholders shall accordingly be exempt from income tax. Consequently, such gains are also exempt from the 20% final withholding tax.

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D. Since the law speaks of the exclusion from gross income of all gains derived from long term investments, it follows that embraced thereunder are income, yield or interest, which are synonymous with gains, whether discounted or at a premium. Thus, the exemption applies to interest/coupon or profit from the principal of such long-term regular or SDT bonds complying with the statutory maturity period."

On the basis of the foregoing rulings, petitioner contended that interest income earned from Fixed Rate Treasury Bonds should be included in the phrase "*gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years*" and, therefore, excluded from gross income under Section 32(B)(7)(g).

Notwithstanding the abovementioned rulings, this court is not in accord with petitioner's contention that interest income on its long-term investments in bonds should be considered as 'gains' exempt from income tax pursuant to Section 32(B)(7)(g) of the 1997 Tax Code.

In the case of ***Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, supra,*** this court first passed upon the issue in this wise:

> "Rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous. Hence, in the case of **Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999,** our Supreme Court, in disregarding a Revenue Memorandum Circular issued by the Commissioner of Internal Revenue, held:
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> > "It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not

> countenance administrative issuances that override, instead of remaining consistent with, the law they seek to apply and implement."
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In this case, We conclude that the aforementioned BIR rulings are erroneous. Such rulings were based on the mistaken belief that the term "gains" as used in Section 32(B)(7)(g) of the Tax Code include interest.

It is a well-settled rule of statutory construction that tax exemptions are strictly construed against the taxpayer. Consequently, where Section 32(B)(7)(g) of the Tax Code, which grants tax exemption, is susceptible of a restrictive interpretation, such interpretation must be adopted.

We take the view that "gains" as the term is used therein in Section 32(B)(7)(g) of the Tax Code cannot include interest since it clearly refers to *gains from the sale* of bonds, debentures and other certificates of indebtedness.

Initially, it must be pointed out that whereas the term "gains" includes "interest" as a general rule, this rule cannot be applied to Section 32(B)(7)(g) of the Tax Code which particularly refers to *"Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness"* in its title and "Gains realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness with a maturity of more than five (5) years in its body. Stated otherwise, Section 32(B)(7)(g) of the Tax Code specifically refers to *gains from the sale* of bonds, debentures and other certificates of indebtedness as contradistinguished from the term "gains" in its general sense, which is synonymous to income."

In this regard, Section 32(A) of the Tax Code defines "gross income" as follows:

Section 32. *Gross Income*. -

(A) *General Definition*. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions and similar items;

(2) Gross income derived from the conduct of trade or business or the exercise of profession;

(3) Gains derived from dealings in property;

(4) Interests;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Annuities;

(9) Prizes and winnings;

(10) Pensions; and

(11) Partner's distributive share from the net income of the general professional partnership.

From the aforequoted Section 32(A) of the Tax Code, it is clear that there is a distinction between "gains derived from dealings in property" and "interests", which are separately classified as items of gross income. "Gains realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness" would fall under the category of "gains derived from dealings in property". On the other hand, "interests" would include interest from bonds, debentures and other certificate of indebtedness. Gain realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness and interest from bonds, debentures and other certificate of indebtedness fall under separate and distinct income categories."

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There is a clear distinction between interest from bonds and gain from the sale of bonds. It is only the "Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years" that is excluded from gross income and thus exempt from income tax under Section 32(B)(7)(g) of the Tax Code. Such gains from sale or exchange or retirement of bonds, debentures or other certificate of indebtedness fall within the general category of "Gains derived from dealings in property", as distinguished from interest from bonds, debentures or other certificate of indebtedness, which fall within the general category of "Interests" under Section 32(A) of the Tax Code.

As previously noted, only citizens, resident aliens and nonresident aliens engaged in trade or business are exempt from income tax on interest from long-term (with a maturity of five years or more) deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the

> Bangko Sentral ng Pilipinas (BSP) pursuant to Sections 24(B)(1) and 25(A) of the Tax Code. On the other hand, domestic and resident foreign corporations are subject to a 20% final tax on such interest pursuant to Sections 27(D)(1) and 28(A) of the Tax Code.
>
> We believe that if Congress intended to exempt interest from bonds, debentures and other certificates of indebtedness under Section 32(B)(7)(g) of the Tax Code, it would have done so in clear and specific terms. The fact that it used the term "Gains from sale" in the aforementioned section, knowing full well of the reference to interest under Sections 24, 25, 27 and 28 of the Tax Code shows that it did not intend to exempt such interest under the aforementioned Section 32(B)(7)(g) of the Tax Code."

Our ruling in the above case was affirmed in *toto* by the Court of Appeals in the case of ***Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 69224, November 15, 2002***, where it was held:

> "The CTA is absolutely correct. Income is the flow of money to an individual or corporation within a specified time, as payment for services, interests, or profits from investments. Income is the return in money from one's business, labor or capital invested. The famous analogy used by the Supreme Court described property, labor and capital as trees and income as their fruits. Thus, income is synonymous with profit or gain. Nippon used this general concept of income or gain to include interest within the meaning of Section 32(B)(7)(g). This strained interpretation suffers from serious flaws.
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> First, while the Tax Reform Act adhered to the above definition of income, it also classified income into the following categories: compensation for services, income derived from the conduct of business or exercise of profession, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, prizes and winnings, pensions, and a partner's distributive share from net income of a general professional partnership. Section 32(B)(7)(g) clearly refers to gains realized from the sale, exchange or retirement of bonds, among others, with a maturity date of more than five (5) years. There is no reason to confuse gains from sale of bonds with gains in the general sense of income. Nippon argued that the law did not qualify the term "gains" but it is impossible not to see that the law did qualify such term and restricted it to gains from sale of bonds.

Section 32(B) enumerates the exclusions from gross income. Exclusions, like tax exemptions, are highly disfavored in law. A person claiming a tax exemption must justify his claim by the clearest terms possible because an exemption from the common burden of taxation is not allowed upon vague implications but on language too plain, to be mistaken. In the instant case, Nippon's claimed exclusion runs counter to the plain, unequivocal language of the law. It resorted to the legislative intent behind the provision to justify departure from the literal meaning but we all know this is prohibited. The only intent that must be given effect is the one expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To depart from the meaning expressed by the words of the statute is to alter the statute and legislate, not to interpret. A statute which is plain, clear and free from doubt is not subject to construction; there is no need for interpretation, only application.

In enacting the Tax Reform Act, the legislature may have intended to develop the capital market and encourage savings in long-term investments but even under the restrictive interpretation that gains under the subject provision means gains from sale of bonds, debentures and other certificates of indebtedness, such legislative intent still finds full expression. Section 32(B)(7)(g) as written and as interpreted by the CTA is still an incentive to the development of the bond market because it excludes gains from sales from the computation of the gross income. This may not be as sweeping as Nippon would have wanted to but it is an incentive nonetheless, which is faithful to the legislative intent. Nippon's all or nothing stance on the exclusion of gains from bonds finds no support in either the language or intent of the law.

Nippon's position must have drawn inspiration from the tax exemption of long-term deposits under Section 24(B)(1) and (25)(A)(2) of the Tax Reform Act. However, these provisions fall under Chapter III, entitled Tax on Individuals and cover specifically citizens/resident aliens and non-resident aliens, respectively. On the other hand, Chapter IV, the Tax on Corporations, does not contain a similar exemption on long-term deposits held by corporations, such as Nippon. Thus, the CTA correctly concluded that interests income on bonds held by corporations are not tax exempt, unlike those held by individuals. This is the law but Nippon could not abide by this and so it attempted to make up for this deficiency in Chapter IV by enlarging the scope of Section 32(B)(7)(g). For these unassailable reasons, the petition must fail."

It is clear from the foregoing discussion that the tax exemption from final withholding tax granted under Section 32(B)(7)(g) of the Tax Code is limited only to the gain from sale of long-term investments (as distinguished from interest income earned from long-term investments which are subject to the 20% final withholding tax). Thus, in the case at bar, this court rules that only the gain on sale of bonds with a maturity period of more than five years shall be exempt from the 20% final withholding tax. Consequently, petitioner is barred from claiming the amount of P10,578,779.75 representing final withholding taxes on interest income, computed as follows:

Withholding Taxes on Accrued Interest Income	P 5,499,346.42
Add: Withholding Taxes on Interest Income Earned on 25 August 1999	6,270,000.00
Subtotal	P 11,769,346.42
Less: Tax Withheld on Accrued Interest Payable	1,190,566.67
Total Withholding Taxes on Interest Income	P 10,578,779.75

We shall now proceed to the factual aspect of the remaining amount of P1,694,002.16, representing final withholding tax on gain on sale of bonds which can legally be the subject of a claim for refund, computed as follows:

Withholding Taxes on Selling Price	P 4,275,495.25
Less: Tax Withheld on Premium	2,581,493.09
Withholding Taxes on Gain on Sale	P 1,694,002.16

As to whether or not the administrative and judicial claims for refund were timely filed, we rule in the affirmative.

Section 230 of the Tax Code provides that both the administrative and judicial claims for refund must be filed within two years from the date of payment of the tax. Since the kind of tax involved in the present case is final tax on gain on sale of long term bonds, the same must be paid and remitted on the 25th day following the close of the calendar quarter pursuant to Section 2.58(A)(2)(c) of Revenue Regulations No. 02-98 in relation to Section 58(A) of the Tax Code.

Inasmuch as the gain on sale of bonds can be determined only at the time of sale of bonds, the periods to be considered are the dates of sale of bonds which are on July 27, 1999, August 4, 1999, January 6, 2000 and January 10, 2000. Therefore, the corresponding withholding taxes on gain on sale of bonds for the dates July 27, 1999 and August 4, 1999 should have been remitted on October 25, 1999, the considered date of remittance of final taxes withheld for the third quarter of 1999 while the final taxes for January 6, 2000 and January 10, 2000 should have been remitted on April 25, 2000. Thus, petitioner had until October 24, 2001 (*year 2000 is a leap year*) within which to file its administrative and judicial claims for refund. Since petitioner filed its written-claim for refund with the Bureau of Internal Revenue on October 23, 2001 and the petition for review was filed on October 24, 2001, both dates of filing are within the two-year prescriptive period.

We now determine whether or not petitioner was able to prove its payment of final withholding taxes on gain on sale of long-term bonds by clear and convincing evidence.

Records show that petitioner purchased the subject bonds from February 25, 1999 to March 31, 1999 from the secondary market, Rizal Commercial Banking Corporation (RCBC), International Exchange Bank (IBank) and Hongkong & Shanghai Banking Corporation (HSBC), as evidenced by various Confirmations of Outright Sale of Government Securities and Confirmations of Outright Purchase of Government

Securities (*Exhibits C to J*). Petitioner subsequently sold these Bonds to HSBC and Citibank, as evidenced by its own Confirmations of Outright Sale of Government Securities and/or Confirmations of Outright Purchase of Government Securities issued by the buyers (*Exhibits K to T*)

However, in the said documents evidencing purchase and sale of bonds, the 20% final taxes withheld are not reflected. In order to prove its payments of final withholding taxes on the said purchase and sale of bonds, petitioner presented Certifications from its sellers of bonds, RCBC, IBANK and HSBC *(Exhibits X, Y and Z)*, and from its buyers of bonds, HSBC and Citibank *(Exhibits Z and AA, inclusive of submarkings)*, certifying that herein petitioner purchased/sold certain fixed rate treasury notes/securities with the corresponding taxes withheld. While the amounts of final taxes withheld as claimed by petitioner on its purchase and sale of bonds tally with the amounts of final taxes withheld reflected in the certifications, this court cannot consider the letters-certifications alone as valid proofs of final withholding taxes. Firstly, the persons who issued the certifications were not presented in court to attest to the accuracy of the entries made therein. More importantly, under Section 58(B) of the Tax Code, a prescribed form is required to be accomplished by every withholding agent to be issued to the recipient of income. Section 58(B) of the Tax Code is quoted hereunder for easy reference:

> **SEC. 58.** ***Returns and Payment of Taxes Withheld at Source.***
> **(A)** xxx
>
> **B)** ***Statement of Income Payments Made and Taxes Withheld.*** – Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such

> quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later that the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

The written statement referred to above with respect to final tax withheld is BIR Form No. 2306 (*formerly BIR Form No. 1743-2*) denominated as "Certificate of Final Income Tax Withheld" *(Revenue Regulations No. 7-96)*, which form is the best evidence to prove that final income tax was withheld and remitted to the Bureau of Internal Revenue *(ITAD Ruling No. 031-01)*. Hence, the Certifications, standing alone, carry little probative value. (*Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6323, July 24, 2003)*

Moreover, since petitioner failed to present as evidence proof of withholding using the prescribed form, the court found it necessary for the petitioner to prove the remittance of the alleged final withholding tax on gain on sale of bonds. Unlike the remittance of final withholding tax on interest of bonds which is the duty of the Bureau of Treasury, the obligation to remit withholding tax on gain on sale of bonds lies on the buyer or seller of the bonds, depending on whether the bonds were sold at a premium or at a discount. Again, petitioner failed to adduce evidence to prove remittance of the alleged final withholding tax on gain on sale of bonds. Thus, the court cannot determine if the alleged erroneously paid taxes went to the coffers of the government (*Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, supra).*

It is likewise worth stressing that the final withholding taxes on the purchase and sale of bonds were on gross cost or selling price. This means that the final withholding taxes on purchase and sale of bonds may have included withholding taxes on accrued interest income attributed to the holding period of the Bonds. Thus, there must be proper segregation or details of final withholding tax because, as we held, the final withholding tax on interest income on long-term bonds is not refundable. Since petitioner failed to show how the final withholding taxes on gross cost and selling price were computed, this court has no way of verifying if the amount of P1,694,002.16 represents a valid final taxes withheld on gain on sale of bonds alone.

At this point, the oft-repeated principle that 'tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption' deserves reiteration *(Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87; and Commissioner of Customs v. Court of Tax Appeals, 328 SCRA 822).*

WHEREFORE, in view of the foregoing, petitioner's claim for refund of erroneously withheld 20% final taxes on interest income is **DENIED** for lack of merit. The claim for refund of erroneously withheld 20% final taxes on gain on sale of treasury bonds is likewise **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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