REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

EMMANUEL C. OÑATE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9498

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 19 2020 4:00 p.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed by petitioner Emmanuel C. Oñate, praying that the Honorable Court render judgment as follows:

1. Ordering the respondent CIR to refund or credit the final tax erroneously withheld totaling Twenty-Five Million Seven Hundred Two Thousand Nine Hundred Fifty-Two Pesos and 11/100 (₱25,702,952.11);

2. Directing respondent CIR to pay the following sums:

    i. Legal Interest on the total amount claimed for refund from the expiration of period within which respondent CIR may grant the same based on the written claim for refund filed by petitioner Oñate until fully paid; and

    ii. At least Five Hundred Thousand Pesos (₱500,000.00), as and by way of attorney's fees and for other expenses of litigation.

THE FACTS

Petitioner Emmanuel C. Oñate is a resident citizen, with residential address at 2416 Bouganvilla Street, Dasmariñas Village, Makati City and a holder of Taxpayer Identification No. (TIN) 130-826-834-000.[1]

Respondent CIR is the chief official of the Bureau Internal Revenue and the person authorized to grant refund or credit of taxes erroneously or illegally collected.[2]

On November 28 2014, Land Bank paid petitioner Oñate the judgment award rendered in the latter's favor pursuant to the Supreme Court case entitled "*Land Bank of the Philippines vs. Emmanuel C. Oñate,*" docketed as G.R. No. 192371 and promulgated on January 15, 2014.[3] The said payment represents the judgment award less the final tax withheld on interest/yield from bank deposits/deposit substitutes amounting to Seven Million Nine Hundred Thirteen Thousand One Hundred Thirty-Four Pesos and 58/100 (₱7,913,134.58)[4] and Seventeen Million Seven Hundred Eighty-Nine Thousand Eight Hundred Seventeen Pesos and 53/100 (₱17,789,817.53)[5] from Peso and US Dollar awards, respectively.

On November 4, 2016, petitioner Oñate filed a written claim[6] for refund or tax credit for the total amount of Twenty-Five Million Seven Hundred Two Thousand Nine Hundred Fifty-Two Pesos and 11/100 (₱25,702,952.11) pursuant to Section 229 of the National Internal Revenue Code (NIRC) for having been collected erroneously by the BIR.

There being no action on the part of the respondent CIR with respect to such claim for refund, petitioner filed the instant Petition for Review.

Respondent filed his *Answer*[7] on February 28, 2017 raising the following Special and Affirmative Defenses, to wit:

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[1] Relevant Stipulated Facts, JSFI, par. 1, Docket, Vol. 1, p. 282.
[2] Relevant Stipulated Facts, JSFI, par. 2, Docket, Vol. 1, p. 282.
[3] Exhibit "P-1-1," Docket, Vol. 1, pp. 448 to 477.
[4] Exhibit "P-3," Docket, Vol. 1, pp. 482 to 483.
[5] Exhibit "P-4," Docket, Vol. 1, pp. 484 to 485.
[6] Exhibit "P-5," Docket, Vol. 1, pp. 486 to 494.
[7] Docket, Vol. 1, pp. 122 to 124.

"1. The interest which is the subject of the instant case is not interest from a long-term investment but interest from a judgment award. Hence, it is subject to a final withholding tax.

2. Assuming but without admitting that it is an interest from a long-term investment, the corresponding interest given by the bank arising from a long-term investment are only covered by the exemption under Section 24(B) (1).

3. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

4. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*);

5. Finally, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1998*). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another-*Non videtur quisquam id capere quod ei necesse est alii restitutere.*

Thereafter, the Pre-Trial Conference was held on August 22, 2017. By agreement, the parties filed their *Joint Stipulation of Facts and Issues* on September 4, 2017.[8] Then, the Court issued the Pre-Trial Order on October 11, 2017.[9]

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[8] Docket, Vol. 1, pp. 282 to 284.
[9] Docket, Vol. 1, pp. 286 to 290.

During trial, petitioner Oñate testified by way of a Judicial Affidavit[10] and Supplemental Judicial Affidavit,[11] to support the material allegations in his Petition for Review. Thereafter, petitioner filed his *Formal Offer of Evidence* on March 8, 2018,[12] all of which were admitted by the Court in the Resolution[13] dated April 19, 2018.

For his part, respondent presented Revenue Officer Alvin B. Lucas, who testified by way of Judicial Affidavit[14] On September 19, 2018, respondent filed his *Formal Offer of Evidence,*[15] to which petitioner filed his *Comment (To Respondent's Formal Offer of Evidence dated 18 September 2018).*[16] In the Resolution[17] dated December 13, 2018, all of respondent's evidence were admitted, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

Petitioner filed his Memorandum on February 4, 2019,[18] while respondent filed a Manifestation and Motion[19] on February 18, 2019, stating that he is adopting all of his arguments found in his Answer dated February 27, 2017. Thereafter, the case was submitted for decision in the Resolution dated March 6, 2019.[20]

Hence, this Decision.

THE ISSUES

The issues[21] stipulated by the parties for the consideration of this Court are as follows:

> "1. Whether petitioner Oñate is entitled to the refund of taxes erroneously withheld from the judgment award rendered in his favor as well as to the payment of legal

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[10] Exhibit "P-15," Docket, Vol. 1, pp.155 to 169.
[11] Exhibit "P-16," Docket, Vol. 1, pp. 314 to 325.
[12] Docket, Vol. 1, pp. 436 to 446.
[13] Docket, Vol. 2, pp. 556 to 557.
[14] Exhibit "R-5," Docket, Vol. 2, pp. 578 to 582.
[15] Docket, Vol. 2, pp. 592 to 595.
[16] Docket, Vol. 2, pp. 597 to 602.
[17] Docket, Vol. 2, p. 606.
[18] Docket, Vol. 2, pp. 611 to 633.
[19] Docket, Vol. 2, pp. 641 to 642.
[20] Docket, Vol. 2, p. 645.
[21] Docket, Vol. 1, Stipulated Issues, JSFI, p. 283.

interest on the same from the time of delay until fully paid, attorney's fees, and other expenses of litigation.

2. Whether or not the judgment award is subject to final withholding tax."

Petitioner's arguments:

Petitioner argues that he is entitled to the refund of ₱25,702,952.11 with legal interest, as the interest on judgment award rendered in his favor is not subject to final withholding tax.

Petitioner further argues that he is entitled to legal interest on the amount claimed for refund from the time of delay until fully paid as well as to attorney's fees and for other expenses of litigation.

Respondent's counter-arguments:

On the other hand, respondent counters that the interest which is the subject of the instant case is not interest from a long-term investment but interest from a judgment award. Hence, it is subject to a final withholding tax.

Assuming, but without admitting, that it is an interest from a long-term investment, respondent believes that the corresponding interest given by the bank arising from a long-term investment are only covered by the exemption under Section 24(B) (1).

In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation. Finally, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance.

THE COURT'S RULING

The instant *Petition for Review* has merit.

Petitioner is entitled to the refund of the final withholding tax erroneously imposed on the legal interest on the judgment award issued by the Supreme Court.

For a claim for tax refund of erroneously collected taxes to prosper, there must be compliance with the requisites imposed by Sections 204 (C) and 229 of the NIRC of 1997, as amended, which reads as follows:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** —
>
> The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer filed 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, of any sum alleged to have been excessively or in any manner wrongfully 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 clearly to have been erroneously paid."

Based on the foregoing provisions, the following requisites must first be established by the taxpayer, to wit:

1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

The legal interest imposed on the judgment award is not subject to tax.

Anent the first requisite, petitioner argues that final withholding tax was erroneously imposed upon the interest on the judgment award rendered in his favor.

According to the petitioner, the interest on the judgment award compensated him for interest which he should have earned from his investment, and should be treated as if it were the actual interest earned by his trust accounts, which were exempt from taxes under the NIRC.

In support of this argument, petitioner cites the Origin of Claim Doctrine, commonly applied by the United States Supreme Court.

We agree with petitioner.

An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[22]

In order to determine if there was indeed an erroneous collection of tax, and that the legal interest imposed on the judgment award is *not* subject to tax, it is first necessary to ascertain the *nature* of the sum sought to be taxed, *i.e.,* the legal interest imposed on the judgment award. This, in turn, will determine if the subject legal interest is taxable or not.

In the case of *Nympha S. Odiamar vs. Linda Odiamar Valencia*, the Supreme Court stated that there are two (2) types of interest imposed on a judgment award, to wit:

> "At the outset, the Court notes that there are two (2) types of interest, namely monetary interest and compensatory interest. **Monetary interest** is the compensation *fixed by the parties* for the use or forbearance of money. On the other hand, **compensatory interest** is that *imposed by law or by the courts* as penalty or indemnity for damages. In other words, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for the delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).
>
> Anent monetary interest, it is an elementary rule that no interest shall be due unless it has been expressly stipulated in writing. In this case, no monetary interest may be imposed on the loan obligation, considering that there was no written agreement expressly providing for such."[23] *(Emphasis supplied)*

Based on the foregoing, interest imposed upon a monetary judgment can either be *monetary interest*, or one which was expressly stipulated in writing; or *compensatory interest*, or one which is imposed by law or the courts as a penalty or indemnity for damages.

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[22] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.
[23] *Nympha S. Odiamar vs. Linda Odiamar Valencia,* G.R. No. 213582, September 12, 2018.

A perusal of the judgment award rendered in favor of petitioner, in *Land Bank of the Philippines vs. Emmanuel Oñate,*[24] shows that the Supreme Court imposed legal interest in favor of the petitioner on the judgment awards for the debited amount of ₱1,471,416.52 and undocumented withdrawals in the amounts of ₱60,663,488.11 and US$3,210,222.85.

In the said Decision, legal interest was imposed because of the "unilateral offsetting of funds without legal justification and the undocumented withdrawals are tantamount to forbearance of money". Thus, it was held that "the unwarranted withholding of money, which rightfully pertains to another, amounts to a forbearance of money, which can be considered as an involuntary loan."[25]

Applying the aforequoted jurisprudential pronouncement in this case, it is clear that the legal interest imposed on the judgment award subject of this case involves *compensatory interest.* To be specific, the legal interest imposed in the judgment award in favor of petitioner was *imposed by the Supreme Court*, as a form of penalty or indemnity for damages, as opposed to compensation *fixed by the parties* for the use or forbearance of money.

Considering that *compensatory interest*, or the legal interest imposed by the courts on a judgment award in favor of a party litigant, is considered a form of penalty or indemnity for damages, it cannot rightfully be considered as taxable income. Thus, the subject legal interest awarded to the petitioner should <u>*not*</u> have been subjected to final withholding tax rate of twenty percent (20%) based on Section 24 (B) (1)[26] of the NIRC of 1997, as amended.

The administrative claim for refund was duly filed with the respondent and the judicial claim was instituted with this Court, both within two (2) years from the date of payment of the tax.

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[24] G.R. No. 192371, January 15, 2014.

[25] Citing *Estores vs. Supangan,* G.R. No. 175139, April 18, 2012.

[26] "**SEC. 24.** ***Income Tax Rates.*** –

xxx xxx xxx

(B) Rate of Tax on Certain Passive Income –

(1) Interests, Royalties, Prizes, and Other Winnings. – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds or similar arrangements; xxx xxx xxx."

From the provisions of Sections 204 (C) and 229 of the NIRC of 1997, as amended, it is clear that both the administrative and judicial claims must be filed within the two-year prescriptive period indicated therein.

In the instant case, the taxes were withheld from the petitioner on November 28, 2014.[27] Counting two (2) years from the said date, petitioner had until November 28, 2016, within which to file its claim for refund/tax credit certificate both in the administrative and judicial levels. Considering that petitioner filed its administrative claim on November 4, 2016,[28] and its judicial claim on November 25, 2016,[29] the claim for refund on the alleged erroneously collected tax falls within the two-year prescriptive period.

Legal interest cannot be imposed in the absence of a statutory provision clearly directing or authorizing the payment of interest by the Government. Moreover, interest may only be awarded when the collection of tax sought to be refunded was attended with arbitrariness.

Anent petitioner's claim for legal interest to be imposed on the amount sought to be refunded, this Court finds it necessary to refer to the ruling made in the case of *Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue,*[30] which states the rule that interest may be awarded, only when the collection of tax sought to be refunded was attended with arbitrariness, to wit:

> "But the more important consideration is the well settled rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness."

[27] Exhibits "P-3" and "P-4," Docket (Vol. I), pp. 482 to 485.
[28] Exhibit "P-5," Docket (Vol. I), pp. 486 to 494.
[29] Docket (Vol. I), pp. 10 to 25.
[30] *Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue, et al.,* G.R. Nos. L-26686 & L-26698, October 30, 1980.

In this case, there is no showing that there is a statutory provision which directs or authorizes the payment of interest on the amount to be refunded to the taxpayer, nor is there any allegation or showing that the collection of tax sought to be refunded was attended with arbitrariness. In the absence of proof to show that either of the two circumstances is present in this case, this Court cannot order the payment of interest on the taxes sought to be refunded.

Petitioner is likewise not entitled to attorney's fees and other expenses of litigation.

Article 2208 of the Civil Code of the Philippines, reads as follows:

> "***Article 2208.*** In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
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> (3) In criminal cases of malicious prosecution against the plaintiff;
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> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> (9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable."

As a rule, in the absence of any of the aforecited circumstances, attorney's fees and expenses of litigation cannot be recovered in the absence of stipulation by the parties.

As held in the case of *Malayan Insurance Company, Inc. vs. St. Francis Square Realty Corporation,*[31] "the general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."

In this case, petitioner failed to cite any legal, factual, and equitable justification for the award of attorney's fees. On the contrary, petitioner merely states that he was compelled to engage the services of counsel to protect his interest, without specifying any act or omission committed by respondent in bad faith, which would justify the award of attorney's fees. There being no compelling reason to justify the award thereof, attorney's fees cannot be recovered by the petitioner in this case.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is hereby **GRANTED.** Respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** the amount of Twenty-Five Million Seven Hundred Two Thousand Nine Hundred Fifty-Two Pesos and 11/100 (₱25,702,952.11) to petitioner, representing erroneously withheld final tax.

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[31] G.R. Nos. 198916-17 and 198920-21, January 11, 2016, citing *ABS-CBN Broadcasting Corporation vs. Court of Appeals,* 361 Phil. 499, 529 (1999).

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice