1B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BOGO MEDELLIN MILLING CO., INC. EMPLOYEES RETIREMENT PLAN PRIVATE DEVELOPMENT CORP. OF THE PHIL., TRUSTEE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4861

Promulgated:
JUN 05 1996

x - x

DECISION

This is a claim for the refund of taxes withheld on interest income in the aggregate amount of P226,595.73 covering the years 1990 and 1991.

Petitioner is a duly qualified retirement benefit plan under Republic Act No. 4917 and as such is entitled to all benefits and privileges accorded by said Act. It is currently under the care of its trustee, Private Development Corporation of the Philippines with address at Bankers Centre, #6764 Ayala Avenue, Makati, Metro Manila.

The facts are as hereunder stated.

On September 24, 1992, petitioner as represented by its then agent, Jardine Davies, Inc., filed with respondent's Appellate Division the aforestated claim for refund on account of its status as a duly qualified retirement plan.

Barely a month later on October 15, 1992, petitioner instituted the present petition for review alleging that respondent has not yet granted its claim for refund and that herein action is resorted to in order to preserve its right to judicially claim for such refund,

Hence, this appeal.

In her answer, respondent avers, among others, that in an action for refund the taxpayer has the burden to show that taxes paid were erroneously or illegally paid and failure to do so is fatal to the action.

The issue thus centers on whether or not petitioner is entitled to the claim prayed for.

We rule in favor of petitioner.

Legally speaking, it has been well settled that a duly qualified retirement plan, such as petitioner, is an employee's trust. Being so, its income earnings enjoy the privilege of tax-exemption. As succinctly stated by the Honorable Supreme Court in **Commissioner of Internal Revenue vs. Court of Tax Appeals**, 207 SCRA 496, to quote:

> There can be no denying either that the final withholding tax is collected from income in respect of which employee's trusts are declared exempt (Sec. 56 [b], now [b], Tax Code). The application of the withholding

> system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

Based on the above, there is no doubt that petitioner's claim is meritorious. A look, however, into the evidence submitted by it in support of its claim lead us to conclude that majority of the evidence are insufficient to prove the entire amount of said claim.

For one, most of the Confirmation of Sale documents were sold to "PDCP as Investment Manager for various accounts", which obviously may refer to accounts other than the account of herein petitioner. (Exhibits "C", "E", "F", "G", etc). Or this score, witness Mr. Baltazar on direct examination stated, thusly:

> Q. Mr. Witness, you mentioned that you are handling trust accounts. Would you mention (sic) [the] trust accounts that you have been handling?
>
> A. Yes.
>
> Q. What are those trust accounts?
>
> A. We have different trust accounts like the individuals, the corporations, the retirement plans as well as the foundations and schools. Because trust accounts have different classifications. We have the individual accounts, the corporate accounts, retirement accounts and the school accounts." (T.S.N., November 3, 1993, pp.6-7)

Verily, the words "various accounts" printed in the Confirmation of Sale documents may refer to individuals, corporations, retirement plans, foundations and schools, and may not necessarily include herein petitioner. Inasmuch as the said Confirmations are unsupported by other documents tending to prove the participation of the petitioner therein such as cash vouchers, purchase tickets, short-term placements, official receipts evidencing payment, and debit-credit entries, We are constrained not to give credit to said documents.

Secondly, some of the Confirmation of Sale documents do not tally with the Schedule of 20% Final Tax Withheld, more particularly on their value and maturity dates and selling prices. (Exhibits "B-4", "K" & "AK").

Lastly, all of the official receipts made for Manila Electric Co. by the trustee, Private Development Corporation of the Philippines, together with the corresponding accounting record of payment of first mortgage bond failed to specifically show any amount of tax so withheld and paid for by herein petitioner. (Exhibits "CS", "CS-1", "CT", "CT-1", "CU", "CU-1", "CV", "CV-1", "CW", "CW-1", "CX" and "CX-1").

Although some of the claims are not accompanied by Confirmation of Sale documents, We have nevertheless allowed them because they are well supported by such other documents as abovementioned which when taken together establishes the existence of the alleged transactions, e.g., sale of treasury bills, their payment from the account of herein petitioner and the fact of corresponding withholding of the final tax.

What can thus be granted to petitioner are the following, namely:

Withheld Taxes	Exhibits
P 2,077.56	"D-8" to "D-25"
111.99	"Y" to "Y-13"
15,288.43	"AA" to "AA-18"
2,241.97	"FF" to "FF-16"
11,388.94	"GG" to "GG-17"
501.69	"VV" to "VV-12"
1,946.62	"AK" and "CM" to "CM-6"
8,000.00	"AL"
3,487.79	"AN"
59.95	"CF" to "CF-5"
194.58	"CG" to "CG-6"
1,663.14	"CH" to "CH-8"
822.81	"CI" to "CI-4"
8.16	"CJ" to "CJ-4"
6.06	"CK" to "CK-4"
70.13	"CL" to "CL-12"
11,532.82	-do-
682.11	"CN" to "CN-7a"
467.59	"CO" to "CO-14"
7,100.00	"CP" to "CP-7"
13,159.71	"CQ" to "CQ-6"
1,706.98	"CR" to "CR-13"
P82,518.90	

With regard to the part of the claim disallowed, 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. (Associated Sugar, Inc. vs.

CIR, CTA Case No. 2944, May 6, 1994, p. 4 citing Insular Lumber Co. vs. CTA, 104 SCRA 721, and CIR vs. Rio Tuba Nickel Mining Corp., SCRA 549).

WHEREFORE, in view of the foregoing premises, the instant **PETITION FOR REVIEW** is hereby **PARTIALLY GRANTED. ACCORDINGLY,** respondent is hereby ordered to refund to the petitioner the amount of P82,518,90. No cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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