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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEMIRARA COAL CORPORATION EMPLOYEES' RETIREMENT FUND represented by its Trustee, The INTERNATIONAL CORPORATE BANK-TRUST DIVISION,
Petitioner,

- versus -

C.T.A. CASE NO. 4886

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 03 1996

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DECISION

This is a claim for the refund of final withholding taxes in the amount of P898,191.72 alleged to have been erroneously deducted and withheld by the Central Bank of the Philippines and remitted to the Bureau of Internal Revenue (BIR) in connection with Petitioner's purchases of government securities and/or income/yield earned from bank deposits from January 1, 1989 until June 30, 1992.

Petitioner is an employees' trust set up by its employer, Semirara Coal Corporation (Semirara for short), for the exclusive benefit of its employees to provide them retirement pension, disability and death benefits.

The retirement benefit plan, otherwise known as the "Semirara Coal Corporation Employees Retirement Plan", established by Semirara for its employees have been approved by the BIR as a reasonable retirement benefit plan within the contemplation of Section 28(b)(7)(A) of the National Internal Revenue Code (NIRC) (Exh. C, p. 202, CTA rec.).

It is administered by its trustee, The International Corporate Bank, Inc. (Interbank) - Trust Division, with offices at 111 Paseo de Roxas, Makati, Metro Manila, pursuant to the Trust Agreement entered into by Semirara and Interbank on June 16, 1989 (Exh. A, pp. 184-192, CTA rec.). [Admitted in the Answer, p. 32, CTA rec.].

Petitioner, thru its trustee, maintained savings deposit accounts and made investments in Treasury Bills and CB Bills for the period January 1, 1989 up to June 30, 1992. It earned interest income from savings deposits and income from money market placements and treasury bills for the said period. A final tax of 20% was withheld by the Central Bank on the interest earned from government securities and by Interbank from interest earned on savings deposits. For the period 1989 to June 1992, a total of P898,191.72 was withheld, computed as follows:

	1989	1990	1991	Jan.-June 1992 .	TOTAL
Savings	P 94.42	P 573.89	P 88.87	P 7.22	P 764.40
T Bills	39,554.25	202,509.73	353,132.50	258,765.39	853,961.87
CB Bills	0.00	0.00	41,361.74	2,103.71	43,465.45
TOTAL	P39,648.67	P203,083.62	P394,583.11	P260,876.32	P898,191.72

On December 5, 1991, the Interbank, Trust & Investment Services Division, as trustee of various retirement funds, filed a written claim for refund with the respondent involving taxes withheld from interest earned on government securities and savings deposits made for the account of its various trustor, from the period January 1, 1989 to September 30, 1991, in the total amount of P5,208,892.10 (Exh. D, pp. 204-216, CTA rec.). Out of the total amount claimed for refund, P528,965.46 represents the taxes withheld from Semirara, computed as follows: (see Schedule attached to Exh. D, p 206, CTA rec.)

	1989 Jan.-Dec.	1990 Jan.-Dec.	1991 Jan.-Sept.	TOTAL
CB/BILLS	0.00	0.00	2,764.40	2,764.40
SAVINGS	94.42	573.89	83.63	751.94
T/BILLS	39,554.25	202,509.73	283,385.14	525,449.12
	39,648.67	203,083,62	286,233.17	528,965.46

On August 21, 1992, Interbank filed another written claim for refund of the taxes allegedly illegally and/or erroneously withheld from the income of the various retirement fund (Exh. E, pp. 217-230, CTA rec.). Thus for the period October 1, 1991 to June 30, 1992, an amount equivalent to the sum of P369,226.26, was withheld from Semirara, broken down as follows: (see Schedule attached to Exh. E, p. 224, CTA rec.).

	1991 Oct.-Dec.	1992 Jan.-June	TOTAL
T/BILLS	69,747.36	258,765.39	328,512.75
CB/BILLS	38,597.34	2,103.71	40,701.05
SAVINGS	5.24	7.22	12.46
	108,349.94	260,876.32	369,226.26

Petitioner invokes the provisions of Republic Act No. 4917 in relation to Section 53(b) of the NIRC. It also relied on the Decision of the Supreme Court *En Banc* in the case of Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, represented by its Trustee-Director, G.R. No. 95022, March 23, 1992, where it was held:

> "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."

Respondent did not act on said claims for refund. Hence, this appeal.

During the course of the trial, petitioner offered various documentary evidence for the purpose of establishing entitlement to the refund claimed. These are:

1. The Trust Agreement between Semirara Coal Corp. and Interbank, dated June 16, 1989 (Exh. A);

2. Semirara Coal Corp. Retirement Plan Rules and Regulations (Exh. B);

3. Letter of the BIR, dated March 13, 1991, addressed to Far East Bank and Trust Company, stating that the Semirara Coal Corp. Retirement Plan qualifies as a reasonable retirement plan under Sec. 28(b)(7)(a) of the NIRC (Exh. C);

4. Claim for refund of Interbank, dated December 3, 1991, in behalf of its various trustors among which includes petitioner for the period January 1, 1989 to September 30, 1991 (Exh. D);

5. Claim for refund of Interbank, dated August 20, 1992, in behalf of its various trustors, including petitioner, covering the period October 1, 1991 to June 30, 1992 (Exh. E);

6. Confirmations of Sale showing the amount of tax withheld from Treasury Bills purchased (Exhs. H to H-20, inclusive);

7. Certifications issued by the Central Bank on February 27, 1990 (Exhs. I, I-1, I-2), February 26, 1990 (Exh. I-3), April 8, 1991 (Exhs. J, J-1 to J-9, inclusive, and Exh. J-10), February 20, 1992 (Exhs. K, K-1 to K-10, inclusive, and Exh. K-11), September 10, 1992 (Exh. L), and September 9, 1992 (Exh. L-1);

8. Monthly Remittance Returns of Income Taxes Withheld by the Central Bank from January 1989 to June 1992 (Exhs. L-1 to L-55, inclusive);

9. Quarterly Returns of Tax Withheld on Interest Paid on Time and Savings Deposits (BIR Form 1745) filed by Interbank for the four (4) quarters of 1990 (Exhs. M, N, O and P), 1991 (Exhs. R, S, T and U) and for the first two quarters of 1992 (Exhs. W and X);

10. Annual Returns of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trust/etc. (BIR Form No. 1745-A) for the years 1990 (Exh. Q), and 1991 (Exh. V); and

11. BIR Payment Orders and CB Confirmation Receipts of Interbank to show payments made corresponding to the taxes withheld in No. 8 above (Exhs. M-1, M-2, N-1, N-2, O-1, O-2, P-1, P-2, R-1, R-2, S-1, S-2, T-1 and T-2). Note: Payments made for the fourth quarter of 1991, first and second quarters of 1992 are already machine validated as shown in the quarterly returns.

Respondent, on the other hand, chose not to present any evidence to controvert the claim for refund. Instead, respondent submitted the case for decision, *sans* any memorandum, on the basis of the pleadings and records of the case.

The only issue to be resolved is: Whether or not petitioner is entitled to the refund of P898,191.72, representing the final withholding taxes on the income/interest from investments in government securities and bank deposits.

This case is not of first impression as held in the case of Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, represented by its Trustee-Director, G.R. 95022, March 23, 1992, pertinent portion of which reads as follows:

> "To begin with, it is significant to note that GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Rep. Act. No. 4917 approved on 17 June 1967. This law specifically provided:
>
> > "SECTION 1. <u>Any provision of law to the contrary notwithstanding</u>, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be <u>exempt from all taxes</u> and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;" x x x (emphasis ours).
>
> In so far as employees' trusts are concerned, the foregoing provision should be taken in relation to then Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, <u>supra</u>, which took effect on 22 June 1957. This provision specifically exempted

employees' trusts from income tax and is repeated hereunder for emphasis:

> "Sec. 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.
>
> xxx xxx xxx
>
> "(b) Exception. - The tax imposed by this Title shall not apply to employee's 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 d'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 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 <u>together with the income of the pension trust</u> 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 Representative, 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 1966, 23 SCRA 715); (Underscoring 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.

The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, cannot be deemed to extend to employees' trusts. Said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which excluded employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (**Villegas vs. Subido**, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

Notably, too, all the tax provisions herein treated come under Title II of the Tax Code on "Income Tax." Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII. Section 56(b), taken in conjunction with Section 56(a), supra, explicitly excludes employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax" it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b]), (now 53[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 payments at the source. If an employee' 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.

Petitioner also relies on Revenue Memorandum Circular 31-84, dated 30 October 1984, and Bureau of Internal Revenue Ruling No. 027-e-000-00-005-85, dated 14 January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on

> interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No. 1959 is clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Pres. Decree No. 1959 did not have the effect of revoking the tax exemption enjoyed by employees' trusts, reliance on those authorities is now misplaced."

We do not intend to depart from the wisdom of the above-mentioned decision on the legal question of whether or not an employees trust, qualified by the BIR as a reasonable retirement benefit plan, is exempt from taxation. However, with respect to the factual issue of whether or not petitioner has proven its entitlement to the amount claimed is another question still to be resolved.

In the recent case of **Interbank Employees' Retirement Plan, represented by its Trustee, The International Corporate Bank - Trust Division vs. Commissioner of Internal Revenue, CTA Case No. 4881, July 30, 1996**, this Court has ruled that pursuant to Sections 50 and 51 of the NIRC in relation with Section 2 of Revenue Regulations No. 3-85, further amending Section 5 of Revenue Regulations No. 23-84, "the return and remittance of final taxes withheld on income derived from bank deposits and yield from deposit substitutes should be filed within twenty-five (25) days from the close of each calendar quarter". (p. 13, Decision CTA Case No. 4881). Since the petition in this case was filed on December 7, 1992, all claims for refund for the year 1989 up to the third quarter of 1990 have prescribed. What remains to be determined is the remaining balance of the amount claimed which have not yet prescribed. Was petitioner able to substantiate its claim for refund?

The individual trustors managed by Interbank specifically showed their account numbers in the attachment to Interbank's claims for refund filed on December 5, 1991 (Exh. D) and August 21, 1992 (Exh. E). Thus, it can be pinpointed for whose account the taxes were withheld. A careful review of the evidence presented by petitioner fully convinced this Court that petitioner has established its right to the refund of P825,086.55, broken down as follows:

Period	TBills	CB Bills	Savings	Total
4th Qtr. 1990	P169,053.23*	P -	P573.89	P169,627.12
Jan.-Sept. 1991	283,385.14	2,764.40	83.63	286,233.17
Oct.-Dec. 1991	69,747.36	38,597.34	5.24	108,349.94
Jan.-June 1992	258,765.39	2,103.71	7.22	260,876.32
	P780,951.12	P43,465.45	P669.98	P825,086.55

* (see p. 213, CTA records)

WHEREFORE, in all the foregoing, respondent is hereby **ORDERED** to **REFUND** in favor of the petitioner the amount of ₱825,086.55, representing erroneously and/or illegally withheld final taxes from its income on government securities investments and interests on savings deposits from the fourth quarter of 1990 to June 30, 1992.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

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