REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DEVELOPMENT BANK OF THE PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 3860

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x 12/14

D E C I S I O N

This case arose from a petition filed by the Development Bank of the Philippines, petitioner herein, for the refund of P91,817.68 paid to the Bureau of Internal Revenue representing the amount of tax withheld on interest remitted to foreign banks.

On the basis of the pleadings filed, respondent Commissioner of Internal Revenue, submitted this case for decision. No memorandum was filed by both parties.

The facts of this case are simple.

Petitioner bank is a government-controlled corporation organized and existing under and by virtue of Philippine laws. Sometime on October 25, 1982, petitioner paid the Bureau of Internal

Revenue the total amount of P14,063,400.65 as withholding taxes due on interest remitted to various foreign creditors for the account of its numerous borrower-clients on their guaranteed foreign obligations. Of the total amount of P14,063,400.65 withholding taxes paid to the Bureau, the amount of P91,817.68 represents the 10% tax withheld on interest payments due on foreign currency loan transaction by one of its clients, i.e., Sta. Ines Melale Forest Products Corporation with Banque Nationale de Paris.

Petitioner contends that at the time it paid the withholding tax of P14,063,400.65 it had no knowledge that Sta. Ines Malale Forest Products Corporation had already paid on October 22, 1982 the P91,817.68 tax corresponding to the firm's interests remitted to Banque Nationale de Paris.

Inasmuch as there has been overpayment on account of the double remittance of P91,817.68, first, by Sta. Ines Malale Forest Products Corporation and, second, by petitioner, the course of action pursued by petitioner was to file a claim for tax credit with the Bureau of Internal Revenue Head Office. Without waiting for the decision of respondent, petitioner filed the instant petition for review so as not to be barred by reason of prescription.

The issue addressed to this Court is whether petitioner has proven a valid claim to the refund of alleged erroneously paid 10% withholding tax on interests remitted to foreign bank in the amount of P91,817.68.

Without going over the actual merits of this case, We are faced with the dilemma of dismissing the petition ***ex propio motu*** for lack of jurisdiction. Our jurisdiction is defeated by the recent promulgation of the Supreme Court in the case of Development Bank of the Philippines vs. The Court of Appeals and the Commissioner of Customs, G.R. No. 86625, December 22, 1989, which affirmed the decision of the Court of Appeals in that case, where it was held that the Court of Tax Appeals has no jurisdiction to take cognizance of the case following the explicit mandate of Section 1 of Presidential Decree No. 242, which provides:

> SECTION 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding

> constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.

Those cases falling under Section 1 shall be submitted for adjudication pursuant to the provisions under Sections 2 and 3 of said Decree either to the Secretary of Justice if the dispute involves only questions of law or to the Solicitor General, Government Corporate Counsel or the Secretary of Justice in cases involving mixed questions of law and of fact or only factual issues.

Considering that the provisions of P.D. 242 which took effect on the date of its promulgation on July 9, 1973 are repugnant with Section 7 of Republic Act No. 1125 providing for the jurisdiction of the Court of Tax Appeals (eff. June 16, 1954), then this later enactment in effect amended the jurisdiction of this court as it was provided in Section 1 of P.D. 242 - "Provisions of law to the contrary notwithstanding".

Thus, as this case involves a claim by DBP, a government owned and controlled corporation, against the Commissioner of Internal Revenue, both parties representing only one interest - the Government, then the procedure to be applied in adjudicating such claim would be that embodied in P.D. 242.

With the circumstances now obtaining and in view of the recent pronouncement of the Supreme Court, suffice it, therefore, to state that it is beyond the ambit of this Court's jurisdiction to take cognizance of the instant petition. As ruled by the High Court, We must obey. Nothing more is to be done except to **DISMISS** this case for lack of jurisdiction without prejudice to the filing of a petition with the Secretary of Justice, as its proper forum.

WHEREFORE, the petition for review is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 29, 1990.

ALEX Z. REYES
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals