REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTORIO C. AUDITOR, RETIRED EMPLOYEE OF TAIYO YUDEN (PHILS.) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6523

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 2 2 2003

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DECISION

This case seeks to refund the amount of P230,700.03 deducted by Taiyo Yuden, Phils. Inc. as withholding tax from petitioner's retirement benefit received from his employer's Special One-Time Voluntary Early Retirement Program.

The following are the pertinent facts as revealed by the records of the case:

Petitioner is an employee of Taiyo Yuden (Phils.) Inc. (*Taiyo, for brevity*) since May 10, 1989 until his separation from service on January 31, 2001, or a service of more than ten (10) years with his employer. He was 53 years old at the time of his separation from service, which came about when Taiyo, in its

Memorandum dated January 5, 2001 *(Exhibit H-2)*, offered a Special, One Time, Voluntary, Early Retirement Program (*Program, for brevity*) as a cost cutting-measure due to subsisting economic difficulties and the decrease in production orders, coupled with the continuing market decline and bleak economic future. Petitioner availed of the Program, for which he received a total retirement benefit of P792,540.00 less the amount of P230,700.03, which is the subject of herein petition.

For the taxable year 2001, petitioner indicated in his Certificate of Income Tax Withheld on Compensation *(Exhibit I-1)* that "Item B above includes P792,540.00 retirement fee under claim for reconsideration for tax exemption." After a follow-up of his request for tax exemption based on Republic Act No. 8424, specifically Section 32(B)(6)(a) *(Exhibit L)*, petitioner, on August 13, 2002, pursued his judicial recourse with this court.

In his Answer, respondent forwarded the following Special and Affirmative defenses:

> 3. There is no allegation or showing that petitioner filed a written claim for refund with respondent as required in Section 204(c) of the Tax Code. Hence, the Honorable Court has no jurisdiction to act on the petition.

4. A perusal of the Memorandum of Taiyo Yuden (Phils.) Inc. dated January 5, 2001, would show that the retirement program may be availed of only on voluntary basis and, therefore, the retirement benefit is not tax exempt.

5. The employees voluntarily applied for retirement, hence, cannot be considered to have been separated beyond their control.

6. The fact that the program was adopted due to subsisting economic difficulties, decrease in production orders, continuing market decline and bleak economic future, does not make it compulsory or involuntary, as in termination due to retrenchment or redundancy.

7. The termination under a special retirement program and termination under the authorized causes enumerated under Articles 283 and 284 of the Labor Code, are of different nature. Under the former, the employees who voluntarily apply for the program shall be entitled to the benefits provided therein, while under the latter, the employer does not ask the employees to apply for separation but implements the reduction program and selects the personnel who would be terminated on its own in the exercise of its exclusive prerogative to terminate its employees on grounds specified under Articles 283 and 284 with the obligation to pay the affected employees separation pay.

8. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

9. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund or credit.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

In their Joint Stipulation of Issues, the parties submitted the following issues to be resolved by this court:

1. Whether or not petitioner complied with Section 32(B)(6)(a) of the Tax Code of 1997.

2. Whether or not the retirement benefits received by petitioner from Taiyo Yuden (Phils.) Inc. is tax exempt.

3. Whether or not petitioner is entitled to the refund of P230,700.03 representing withholding tax on compensation received under the Special One-Time Voluntary Early Retirement Program.

4. Whether or not the applicable law is Section 32(B)(6)(a) or Section 32(B)(6)(b) of the Tax Code of 1997.

At the outset, it is necessary to resolve the procedural issue wherein respondent argues that there is no showing that petitioner filed a written claim for refund with respondent as required in Section 204(c) of the Tax Code, hence, the court has no jurisdiction to act on the petition.

We do not agree. The second sentence of the first paragraph of Section 204 (C) of the National Internal Revenue Code (NIRC) of 1997 states that:

> **SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
>
> (c) x x x No credit or refund of taxes or penalties shall be allowed unless the taxpayer files 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.

As stated earlier, for the taxable year 2001, petitioner indicated in his Certificate of Income Tax Withheld on Compensation *(Exhibit I 1)* that "Item B above includes P792,540.00 retirement fee under claim for reconsideration for tax exemption." This certificate was attached to petitioner's 2001 Annual Income Tax Return filed on January 14, 2002, wherein petitioner likewise indicated in line 21A thereof that the amount of P792,540.00 represents "Retirement benefits claimed for tax exemption." The court believes that the said act of the petitioner is a substantial compliance with the second sentence of the first paragraph of Section 204(C) of the NIRC of 1997, considering the inclusion of his retirement benefit in the computation of his gross income.

Proceeding now to the substantial issue of the case, Section 32(B)(6)(a) of the 1997 NIRC has excluded in the computation of Gross Income certain items which include Retirement Benefits, Pensions, Gratuities, thus:

> **SEC. 32**. *Gross Income.-*
>
> (A) *General Definition.-* xxx
>
> (B) *Exclusions from Gross Income.-* The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> (6) Retirement Benefits, Pensions, Gratuities, etc.-
>
> "(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided, further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term *'reasonable private benefit plan'* means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and

> wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

The said provision of the NIRC of 1997 enumerates the concurrent requirements before such retirement benefit may be treated as exclusion from gross income, they are:

(a) retiring official or employee must have been in the service of the same employer for at least 10 years;
(b) retiring official or employee is not less than 50 years of age at the time of retirement;
(c) reasonable private benefit plan;
(d) retiring official or employee should not have previously availed of the privilege under a retirement benefit plan of the same or another employer. (*Lino T. Trinidad, vs. The Commissioner of Internal Revenue [C.T.A. CASE NO. 2976. August 14, 1981]*)

At the time of his separation from service effective January 31, 2001, petitioner was 53 years of age and has rendered more than ten years of service with his employer since his appointment on May 10, 1989, thus fulfilling the first and second requirements. And to prove that he has not previously availed of the privilege under a retirement benefit plan from another employer, petitioner presented a certification *(Exhibit E)* from his former employer (*Atlas*

Consolidated Mining) stating that petitioner was employed from January 6, 1977 until his separation on March 31, 1989 due to his resignation.

As to the presence of a reasonable private benefit plan, petitioner requested for a subpoena *duces tecum* from the court in order to compel his employer to submit its retirement plan. Taiyo complied with the order of the court by producing its "Plan Rules Taiyo Yuden (Philippines), Inc. Employees Retirement Plan *(Exhibit H)* certified by its Director and General Manager for HR and General Affairs Division. The said Plan was confirmed *(Exhibit H-1)* to be a "reasonable private benefit plan" within the contemplation of Section 32(B)(6)(a) by Sixto S. Esquivias IV, OIC, Deputy Commissioner (Legal and Enforcement Group) of the BIR on August 12, 1998. The mentioned documentary evidence complied with the second requirement of Section 32(B)(6)(a).

However, it bears stressing that herein petitioner retired under the "Special, One-Time, Voluntary Early Retirement Program" offered by Taiyo on January 5, 2001 to all qualified employees. Petitioner did not retire under the regular plan of Taiyo, denominated as "Taiyo Yuden (Phils), Inc. Employees Retirement Plan" which was found by the BIR to be a "reasonable private benefit plan". To be exempt from taxation under the aforequoted section of the NIRC, it is not enough that the retiring employee be in the service of the same employer for at least ten (10) years and he is not less than fifty (50) years of age at the time of retirement. The law requires that the retirement benefits must have been received by the employee in accordance with the reasonable private benefit plan maintained by the employer. Clearly, petitioner's retirement benefit, not having been received under the reasonable private benefit plan maintained by Taiyo, does not fall under Section 32(B)(6)(a). Consequently; the same is not exempt from taxation.

Petitioner likewise invokes Section 32(B)(6)(b) of the NIRC of 1997 which exempts from taxation any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or **for any cause beyond the control of the said official or employee**. According to petitioner, pursuant to the said section, the early retirement benefits under the Special One-Time, Voluntary Early Retirement Program is exempted from the withholding tax as their retirement was due to "a cause beyond their control."

We do not agree. The availment of the program was on a purely voluntary basis and the employee may opt to stay if he so desires. If he, however chooses to avail of the program, the separation cannot be considered as due to a cause beyond the control of the employee. Though we symphatize with the petitioner that the program was adopted due to subsisting economic difficulties, yet it does not make said program compulsory or involuntary, as in termination due to retrenchment or redundancy as provided under Articles 283 and 284 of the Labor Code.

The law is clear and mandatory. It merely calls for application as it is written. And it is well-settled that a statute, free from constitutional infirmity, must be enforced as written. Where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction (*Acting Commissioner of Customs vs. Manila Electric Company, L-23623, June 20, 1977, 77 SCRA 473; Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue, L 31057 and L 31137, May 29, 1981*).

In sum, since the petitioner failed to comply with all the requisites of Section 32(B)(6)(a) of the NIRC of 1997, his retirement benefit received from the Program of his employer was correctly included in the computation of his gross income. Likewise, his case does not fall under the provision of Section

32(B)(6)(b). Verily, petitioner's claim for the refund of the tax withheld from his retirement benefits lacks legal basis.

IN VIEW OF THE FOREGOING, the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
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