REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

GOVERNMENT OF SINGAPORE INVESTMENT CORPORATION PTE LTD.,
Respondent.

CTA EB No. 1401
(CTA CASE No. 8437)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
NOV 28 2017 2:45 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution of this Court *En Banc* is the Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision promulgated May 12, 2017) seeking to set aside the Decision[1] promulgated on May 12, 2017, the dispositive portion of which reads as follows:

Decision dated May 12, 2017:

"**WHEREFORE**, the petition is **DENIED**. The Decision of the Second Division of this Court in CTA Case No. 8437 dated August 27, 2015, and its Resolution dated December 1, 2015, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED."

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[1] En Banc Docket, pp. 94-108.

In the assailed decision, the Court held that the Government of Singapore Investment Corporation Pte Ltd. (GSICPL) has sufficiently established that it is a financial institution wholly owned and controlled by the Government of Singapore; that it paid income tax on interest despite its exemption; and that as a tax-exempt entity, it is entitled to a refund from its payment of erroneously withheld Final Withholding Tax (FWT).

In an attempt to dissuade this Court of its ruling, petitioner argues that Section 32(B)(7)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that investment in the Philippines in loans, stocks, bonds or other domestic securities ***must be done directly by foreign governments***, financing institutions owned, controlled, or enjoying refinancing from foreign governments, and international or regional financial institutions established by foreign governments ***so that the income derived therefrom shall be exempt from taxation***.

Further, the CIR asserts that since the Certification and Statement of Final Taxes Withheld issued by the Bureau of Treasury (BOT) were in favor of Citibank, there is a "gap" in the chain. Thus, there is no proof sufficient enough to create a link that the Treasury bills (T-bills) withheld by the BOT from Citibank are those of GSICPL's.

For emphasis, the Court again quotes Section 32(B)(7)(a)(ii) of the NIRC of 1997, as amended, as follows:

> "SEC. 32. Gross Income.-
>
> xxx xxx xxx
>
> (B) Exclusions from Gross Income. -The following items shall ***<u>not be included in gross income and shall be exempt from taxation</u>*** under this Title:
>
> xxx xxx xxx
>
> (7) Miscellaneous Items. –

(a) ***Income Derived by Foreign Government. - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments***, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

xxx xxx xxx

In relation to Section 2.57.5 of Revenue Regulations No. 2-98, as amended, which provides:

"Section 2.57.5. Exemption from Withholding.- The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

xxx xxx xxx

(B) ***Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:*** xxx "

In sum, for the interest income received by GSICPL from its investments in T-Bonds to be exempt from income tax, and consequently from FWT, GSICPL must either be a (1) foreign government, or (2) a financing institution owned or controlled by, or enjoying refinancing from, foreign governments, or (3) an international or regional financial institution established by foreign governments.

Under the premises, and contrary to petitioner's allegation, there is nothing in Section 32(B) of the NIRC of 1997, as amended, which would show that the investment should be done directly by the foreign government, and not through a mere custodian or an intermediary, for the income

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derived from the investment to be exempt from tax. Clearly, the "gap" being referred to does not exist.

Records reveal that pursuant to the Direct Custodial Services Agreement (DCSA), petitioner appointed Citibank as its custodian, authorizing it and its affiliates to hold certain assets/properties of petitioner such as T-Bonds and other securities. Each of these assets/properties have safekeeping accounts that have its own cash account where the interest on the assets/properties are lodged and credited.

As a custodian, Citibank-Philippines maintains an omnibus account with the Registry of Scripless Securities (ROSS), under which all of the T-Bills and T-Bond holdings of its clients, including petitioner's, are also recorded.

Notably, on coupon payment date, the Bureau of Treasury automatically withholds a 20% final tax on all of its coupon payments, regardless of the status of the T-Bond holder. The Bureau of Treasury remits the FWT to the Bureau of Internal Revenue and remits the balance or the net interest payments due on the government securities to Citibank's Demand Deposit Account, which are later on distributed by Citibank to the accounts of its clients.

Hence, the BOT, which is the withholding agent for the FWT due on interest income derived by petitioner from the T-Bonds, considers Citibank as payee of the interest due on such securities.

It is established that Certifications issued by the BIR constitute sufficient proof of the remittance and payment of FWT on T-Bonds to the BIR. In *International Exchange Bank vs. Commissioner of Internal Revenue*[2], this Court granted therein petitioner's claim for refund of the FWT on interest income from investment in T-Bonds on the basis of the Certification issued by the Bureau of Treasury. The Certification proved that the details of T-Bonds indicated therein were received by therein petitioner, net of the 20% FWT which was already remitted to the BIR.

On these bases, GSICPL had satisfactorily proven that the BOT withheld twenty percent (20%) FWT and remitted

[2] CTA Case No. 7113, September 12, 2008.

the same to the BIR, as certified by the its Revenue Accounting Division (RAD).

The Supreme Court held that one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications[3]. Accordingly, this Court rules that the documents admitted in evidence unequivocally show that the FWTs arising from GSICPL's investment in T-Bonds were erroneously withheld and remitted to the BIR. Consequently, the Commissioner must refund GSICPL the taxes it had paid for the period from February 2010 to November 2011.

In fine, the Court En Banc finds no valid justification to compel a modification or reversal of the assailed Decision

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision promulgated May 12, 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[3] Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 172231, February 12, 2007.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice