REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

C.T.A. CASE NO. 6680

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 27 2006

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DECISION

UY, J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of US$73,355.28 or P3,648,026.23 allegedly representing over-remittance of final withholding taxes on petitioner's Foreign Currency Deposit (FCDU) - related transactions for taxable year 2001.

THE FACTS

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City. Respondent, on the other hand, is

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the duly appointed Commissioner of Internal Revenue vested with the authority to exercise the functions of said office, including, *inter alia*, the power to grant refunds for any internal revenue tax erroneously paid, assessed or collected, holding office at the Bureau of Internal Revenue Building, Agham Road, Diliman, Quezon City.[1]

As a commercial bank duly authorized by the Bangko Sentral ng Pilipinas (BSP) to operate under the expanded foreign currency deposit system, petitioner is mandated by Section 57(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 02-98, as amended, to withhold the final income tax due: (a) on the interest income derived by its resident clients from their FCDU deposit accounts (FCDU Deposits) with petitioner at the rate of seven and a half percent (7.5%) as prescribed by Section 24(B)(1) of the NIRC of 1997, as amended; and (b) on the interest income derived by other lending banks from petitioner's foreign currency borrowings (FCDU Borrowings) at the prescribed rate of (10%) under Section 27(D)(3) of the NIRC of 1997, as amended.

Pursuant to Section 2.58(A)(2)(a) of RR No. 02-98, as amended, the filing of the return and remittance of final taxes withheld shall be within twenty-five days after the end of each month. Accordingly, on the dates specified below, petitioner filed with the Bureau of Internal Revenue (BIR) its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form 1601-F) for the months of January, February, March and April, 2001 and remitted final income taxes withheld in the total amount of P6,363,562.68. The remittance

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[1] Joint Stipulation of Facts and Issues (JSFI), paragraphs 1 and 2, Summary of Admitted Facts; Records, pp. 66-67.

of P6,363,562.68 included the amount of P4,144,096.22 representing 10% final withholding taxes on the interest income derived by other lending banks from petitioner's FCDU Borrowings, detailed as follows:

			FINAL INCOME TAXES WITHHELD ON			
Exhibit	Period Covered	Date Return Filed & Tax Remitted to	Interest & other income payments on foreign currency transactions/loans payable to FCDUs (10%)	Other Payments to Non-resident Foreign Corps (15%)	Prizes exceeding P10,000 & other Winnings paid to individuals (20%)	TOTAL AMT OF FINAL TAXES WITHHELD
D, XX	Jan., 2001	26-Feb-01	P 746,834.71	P 2,113,986.46	P 105,480.00	P 2,966,301.17
E, YY	Feb., 2001	26-Mar-01	1,009,567.36			1,009,567.36
F, ZZ	March, 2001	25-Apr-01	1,146,106.83			1,146,106.83
G, AAA	April, 2001	25-May-01	1,241,587.32			1,241,587.32
		Total	P 4,144,096.22	P 2,113,986.46	P 105,480.00	P 6,363,562.68

Likewise, under Section 2.58(A)(2)(c) of RR No. 02-98, as amended, petitioner is required to file the return and remit the related final taxes withheld on the interest income on FCDU Deposits within twenty-five days after the end of each quarter. Thus, on April 25, 2001, petitioner filed its Quarterly Remittance Return of Final Income Taxes Withheld On Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc., (BIR Form No. 1602) with attached Summary Listing of Taxes Paid for the first quarter of 2001[2] and remitted final withholding taxes in the sum of P331,156,245.36[3] which included the amount of P1,238,072.58 representing 7.5% final withholding taxes on the interest income derived by petitioner's resident clients with their FCDU deposit accounts.

Petitioner, however, alleges that the amounts of P4,144,096.22 and P1,238,072.58 do not represent the correct FWT due on the interest income on FCDU Borrowings and FCDU Deposits. According to petitioner, there

[2] Exhibits "H" and "I".
[3] Exhibit "ZZ-2".

were erroneous postings made by its employee in the corresponding subsidiary ledgers as there was an over-remittance in the amounts of: (a) US$59,243.36 pertaining to the 10% FWT on FCDU Borrowings; and (b) US$14,111.92 pertaining to the 7.5% FWT on FCDU Deposits or in the sum of US$73,355.28.

Relative thereto, petitioner filed an administrative claim for refund with the BIR on June 6, 2001 corresponding to the alleged over-remittance of final withholding taxes on the interest income on FCDU Borrowings and FCDU Deposits in the total amount of US$73,355.28.[4]

As respondent has not rendered any ruling or decision on the aforesaid claim, petitioner filed a Petition for Review with this Court on April 22, 2003.

Respondent, in his Answer filed on June 26, 2003, raised the following Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P3,648,026.23 being claimed by petitioner as allegedly representing overpaid final withholding tax for the year 2001 was not properly documented;

6. 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;

7. 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/credit; and

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

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[4] Exhibit "A".

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During the course of the trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, manifested that he is submitting the case for decision as he had no witness to present.

On December 6, 2005, the case was submitted for decision sans the memorandum of the respondent. Hence, this decision.

THE ISSUE

In their Joint Stipulation of Facts and Issues filed on September 29, 2003 and approved by this Court in the Resolution promulgated on October 1, 2003,[5] the parties agreed that the sole issue to be resolved in this case is: " **Whether or not petitioner is entitled to the refund of excessively remitted final withholding taxes for the taxable year 2001 amounting to US$73,355.28 or P3,648,026.23"[6].**

THE COURT'S RULING

Upon careful scrutiny of the evidence adduced solely by petitioner, this Court finds legal basis to grant the petition, but not for the entire amount claimed as will be explained later.

Admittedly by respondent, petitioner filed the following returns: (a) Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form 1601-F) covering the months of January, February, March and April, 2001 on February 26, 2001, March 26, 2001, April 25, 2001 and May 25, 2001, respectively[7] ; and (b) Quarterly Remittance Return of Final Income Taxes

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[5] Resolution, Records, p. 70.
[6] Joint Stipulation of Facts and Issues, Records, pp. 66-68
[7] Exhibits "D, E, F," and "G"

Withheld for the first quarter of 2001 on April 25, 2001.[8] The final withholding taxes reflected in the returns included the 10% FWT of P4,144,096.22 pertaining to the interest income derived by other lending banks from petitioner's FCDU Borrowings and 7.5% FWT of P1,238,072.58 pertaining to the interest income derived by petitioner's resident clients with their FCDU deposit accounts. These taxes were remitted to the BIR through the BSP's Electronic Fund Instruction System (EFTIS) wherein petitioner's demand deposit account with the BSP was debited for remittances made to the BIR. This was clearly explained during the hearing conducted on August 5, 2004 by Ms. Pia Llena, then Division Chief III of petitioner's Treasury Operations Division, to wit:

> "ATTY. CONCEPCION
> Q. Could you please tell us how remittances of internal taxes done through this Electronic Fund Transfer?
>
> MS. LLENA
> A. Okay. For example, we received a Credit Advice from the Central Tax Management Group of our Financial Accounting Division together with a TOD or Treasury Operations Division prescribed EFTIS form, indicating therein the amount of remittance, the nature or type of remittance, the transaction code, the tax return form, if applicable, and then, a TOD personnel will input the transaction using the BSP EFTIS. And then, two other personnel of the Treasury Operations Division who act as the first and second approver will verify and approve the transaction. And then, once the transaction has been verified and approved, the same will be sent to the BSP. Once the transaction is sent to the BSP, the system will automatically generate a BSP reference number and a BSP transaction registry, which will indicate a status of "approved", which is an indication that the transaction has been sent to the BSP, has been received and approved by the BSP. [9]"

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[8] Exhibit "H"
[9] TSN, Hearing held on August 5, 2004, pp. 8-10

The Court considered the BSP FTI Transaction Registry Forms[10] and Certification issued by the Bangko Sentral ng Pilipinas dated September 2, 2004[11] as sufficient proofs that on various dates specified below, petitioner actually remitted the following taxes to the BIR:

	Date	Total Amount	Per BIR Form			
Exhibit	Remitted	Remitted	1601-E	1601-F	1602	2551
XX	26-Feb-01	P 4,182,275.48	P1,215,974.31	P2,966,301.17		
YY	26-Mar-01	3,016,157.45	2,006,590.09	1,009,567.36		
ZZ	25-Apr-01	430,116,479.24	1,425,313.22	1,146,106.83	P331,156,245.36	P96,388,8313.83
AAA	25-May-01	2,510,742.91	1,269,155.59	1,241,587.32		

The aforesaid remittances included the amounts of P4,144,096.22 and P1,238,072.58 representing 10% FWT on FCDU Borrowings and 7.5% FWT on FCDU Deposits declared per BIR Forms 1601-F and 1602, respectively. However, records further reveal that the total interest income derived by other lending banks from petitioner's FCDU Borrowings during the months of January 2001 up to April 2001 amounted to US$242,412.36, detailed as follows:

	Jan-01		Feb-01		Mar-01		Apr-01		
	Exhibit	US Dollar Amount	Exhibit	US Dollar Amount	Exhibit	US Dollar Amount	Exhibit	US Dollar Amount	US Dollar Total Amount
ALLIED BANK	OOO-1 & OOO-2	130,600.42	PPP-1	45,939.91	PPP-2	12,043.84		-	188,584.17
BANK OF COMMERCE	QQQ-1	3,750.00		-		-		-	3,750.00
I BANK	RRR-1 & RRR-2	3,698.54		-		-		-	3,698.54
MAYBANK	SSS-1	12,038.05	SSS-2	12,096.36	SSS-3	10,539.52	SSS-4	10,048.29	44,722.22
PBCOM	TTT-1 & TTT-2	1,057.10		-		-		-	1,057.10
UCPB		-		-	UUU-1	345.12	UUU-2	255.21	600.33
Total		151,144.11		58,036.27		22,928.48		10,303.50	242,412.36

[10] Exhibits "XX to AAA".
[11] Exhibits "BBB" and "BBB-1".

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Clearly, the 10% FWT due on the interest income of US$242,412.36 earned by other lending banks from petitioner's FCDU Borrowings amounted only to US$24,241.23 or P1,192,922.18 which when deducted from the total remittance of the amount of US $83,484.59 or P4,144,096.22 to the Bureau of Internal Revenue resulted in an excess remittance of US$59,243.36 or P2,951,174.04, computed as follows:

Period Covered	Exchange Rate US$ to Php	10% FWT Due In US$	10% FWT Due in Php	10% FWT Remittances Date Paid	10% FWT Remittances In US$	10% FWT Remittances in Php	Over-remitted 10% FWT In US$	Over-remitted 10% FWT in Php
Jan. '01	49.4120000476	15,114.44	746,834.71	26-Feb-01	15,114.44	746,834.71	-	-
Feb. '01	48.2629997839	5,803.60	280,099.15	26-Mar-01	20,918.04	1,009,567.36	(15,114.44)	(729,468.21)
Mar. '01	49.3779998863	2,292.84	113,215.85	25-Apr-01	23,210.88	1,146,106.83	(20,918.04)	(1,032,890.98)
Apr. '01	51.2180000767	1,030.35	52,772.47	25-May-01	24,241.23	1,241,587.32	(23,210.88)	(1,188,814.85)
		24,241.23	**1,192,922.18**		**83,484.59**	**4,144,096.22**	**(59,243.36)**	**2,951,174.04)**

Likewise, the total interest income derived by petitioner's resident clients from their FCDU deposit accounts for the first quarter of 2001 amounted to US$146,136.40, detailed as follows:

	Jan-01 Exhibit	Jan-01 US Dollar Amount	Feb-01 Exhibit	Feb-01 US Dollar Amount	Mar-01 Exhibit	Mar-01 US Dollar Amount	US Dollar Total Amount
ACES PHILS CELLULAR CORP	DDD-1	1,063.99	DDD-2	1,069.08	DDD-3	970.24	3,103.31
TRUST-GREENCHECK PRIV IND	EEE-1 & GGG-1	19,758.42	GGG-2 & III-1	20,360.98	III-2 & LLL-1	25,764.49	65,883.89
BUREAU OF TREASURY	MMM-1 & MMM-2	35,622.33	MMM-3 & MMM-4	8,523.26	MMM-5 & MMM-6	32,959.44	77,105.03
PNOC EDC	NNN	44.17		-		-	44.17
Total		56,488.91		29,953.32		59,694.17	146,136.40

The 7.5% FWT due on the interest income of US$146,136.40 related to FCDU Deposits of petitioner's clients amounted only to US$10,960.28 or P541,221.84 which when compared to the total remittance to the BIR of

US$25,072.20 or P1,238,072.58 would show an excess payment of US$14,111.92 or P696,850.74, computed as follows:

Period	Exch. Rate	7.5% FWT Due		7.5% FWT Remittance			Over-remitted 7.5% FWT	
Covered	US$ to Php	In US$	in Php	Date Paid	In US$	in Php	In US$	In Php
Jan. 2001		4,236.60						
Feb. 2001		2,246.58						
Mar. 2001		4,477.10						
	49.38029291	10,960.28	541,221.84	Apr. 25 '01	25,072.20	1,238,072.58	(14,111.92)	(696,850.74)

The excess FWT remittances were brought about by the erroneous postings made by one of petitioner's employees, Ma. Rosario V. Lubrico. This was testified to by Ma. Bella V. Montanes, Assistant Manager of the Treasury and Accounting Division, during the hearing of March 10, 2004, *viz*:

"ATTY. CONCEPCION:
Q. Let us now focus on the amounts posted in this Ledgers and Summaries. Can you please tell us the amount of withholding tax due and the amount actually remitted by the petitioner for the periods January to May 2001?

MS. MONTANES:
A. xxx xxx xxx

To summarize it all the total tax due only on the 7.5% FCDU deposits is $10,960.28 but we remitted an amount of $25,072.20 thereby having an over remittance of $14,111.92. While on the 10% withholding tax on FCDU borrowings the amount due is only $24,241.23 but we remitted an amount of $83,484.59. Thereby having an over remittance of $59,243.36.

ATTY. CONCEPCION:
Q. Can you relate once again how Ms. Lubrico, the one in-charge of posting this amount in Subsidiary Ledger made the erroneous postings?

MS. MONTANES:
A. Well, Ms. Lubrico got confused between the two (2) Subsidiary Ledgers of the APBIR and so, she started her seems (sic) of error by posting the remittance for

the 10% withholding tax to that of the 7.5% withholding tax on the TCDs and that this is under May of 2001.

ATTY. CONCEPCION:
Q. When were these inadvertent postings discovered?

MS. MONTANES:
A. The General Ledger of the Accounts Payable others where these two (2) Subsidiary Ledgers roll-up showed the negative balance. And so upon investigation it was due to the mispostings of Ms. Lubrico."[12]

Moreover, petitioner illustrated the erroneous postings in its subsidiary ledgers as follows:[13]

A. 7.5% Withholding Tax on FCDU Deposits (In US Dollars)

Actual Posting (Per Books)				Should Be Posting (Per Books)			
Date	Remittance	W/tax	Balance	Date	Remittance	W/tax	Balance
Jan 2001	-	4,236.60	4,236.60	Jan 2001	-	4,236.60	4,236.60
Feb 2001	15,114.44	2,246.58	(8,631.26)	Feb 2001	-	2,246.58	6,483.18
Mar 2001	20,918.04	4,477.10	(25,072.20)	Mar 2001	-	4,477.10	10,960.28
Apr 2001	25,072.20			Apr 2001	25,072.20		(14,111.92)
				Over-Remittance			(14,111.92)

B. 10% Withholding Tax on FCDU Borrowings

Actual Posting (Per Books)				Should Be Posting (Per Books)			
Date	Remittance	W/tax	Balance	Date	Remittance	W/tax	Balance
Jan 2001	-	15,114.44	15,114.44	Jan 2001	-	15,114.44	15,114.44
Feb 2001	-	5,803.60	20,918.04	Feb 2001	15,114.44	5,803.60	5,803.60
Mar 2001	-	2,292.84	23,210.88	Mar 2001	20,918.04	2,292.84	(12,821.60)
Apr 2001	-	1,030.35	24,241.23	Apr 2001	23,210.88	1,030.35	(35,002.13)
				May 2001	24,241.23		(59,243.36)
				Over-Remittance			(59,243.36)

Evidently, petitioner over-remitted the 10% FWT due on the interest income derived by other lending banks from petitioner's FCDU Borrowings in the amount of US$59,243.36 or P2,951,174.04 and the 7.5% FWT due on the

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[12] TSN, Hearing held on March 10, 2004, pp. 16-21
[13] Exhibit "B".

interest income earned from the FCDU Deposits of petitioner's clients in the amount of US$14,111.92 or P696,850.74 totaling to US$73,355.28 or P3,648,024.78.[14] Therefore, the excess payment of P3,648,024.78 constitutes erroneously paid tax which is refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. 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."
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, *no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment*: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

[14] Discrepancy of P1.45 in peso value of subject claim due to rounding off.

Based on the aforequoted legal provisions, the judicial remedy of filing a claim for refund of erroneously paid tax is within two (2) years from the date of payment of the tax. In the case at bench, the claimed amount of US$73,355.28 or P3,648,024.78 covers: (1) 10% FWT on interest income derived by other lending banks from petitioner's FCDU Borrowings in the amount of US$59,243.36 or P2,951,174.04 for the months of February, March and April 2001 which was remitted on March 26, 2001, April 25, 2001 and May 25, 2001, respectively; and (2) 7.5% FWT on interest income earned by petitioner's clients from their FCDU Deposits in the amount of US$14,111.92 or P696,850.74 for the first quarter of 2001 which was remitted on April 25, 2001, summarized below:

10% FWT on Interest Income - FCDU Borrowings

Period Covered	Date Paid to the BIR	Amount In US$	Amount in Php
Feb. 2001	26-Mar-01	15,114.44	729,468.21
Mar. 2001	25-Apr-01	20,918.04	1,032,890.98
Apr. 2001	25-May-01	23,210.88	1,188,814.85
		59,243.36	**2,951,174.04**

7.5% FWT on Interest Income – FCDU Deposits

Period Covered	Date Paid to the BIR	Amount In US$	Amount in Php
1st Qtr '01	25-Apr-01	**14,111.92**	**696,850.74**
Total Claim		**73,355.28**	**3,648,024.78**

Petitioner filed its administrative claim for refund on June 6, 2001 and its judicial claim on April 22, 2003. Based on the respective dates of remittance by petitioner of the subject claim to the BIR on March 26, 2001, April 25, 2001 and May 25, 2001, as reflected in the above summary under the second column designated as "Date Paid to the BIR", petitioner had until

March 26, 2003, April 25, 2003 and May 26, 2003 (May 25, 2006 being a Sunday) within which to file its claim for refund both in the administrative and judicial levels.

Undeniably, petitioner's alleged over-remittance for the month of February 2001 pertaining to the 10% final taxes withheld on interest income earned by other lending banks from petitioner's FCDU Borrowings in the amount of US $15,114.44 or P729,468.21, was filed out of time because petitioner had only until March 26, 2003 to file the said claim, while the instant judicial claim was filed only on April 22, 2003. Consequently, the same should be denied. However, the remaining claim for over-remittance in the total amount of US$58,240.84 or P2,918,556.57 will prosper having been duly substantiated and timely filed within the two-year prescriptive period. Correspondingly, said amount should be refunded to petitioner.

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to the petitioner the reduced amount of P2,918,556.57 representing over-remittance of final withholding taxes on its FCDU related transactions for taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice