REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEANDRO A. ALMENDRAL,
Petitioner,

- versus - C.T.A. CASE NO. 4571

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

5/7/93

D E C I S I O N

This is a simple claim for refund by petitioner covering the amount of P16,016.72 representing income tax withheld from the accumulated vacation and sick leaves upon his retirement from government service.

As shown by the records of this case, it appears that petitioner Leandro A. Almendral was the Assistant Director of the Department of Loans and Credit of the Central Bank of the Philippines until his compulsory retirement on March 15, 1989. At the time of his retirement, petitioner was entitled to the commutation of 153.20 days unused vacation and sick leave credits (Exh. "A", p. 57, CTA records) with money value amounting to

P90,426.65 (Exh. "B", p. 58, CTA records). From said leave credits, the amount of P16,016.72 was withheld by the Accounting Department of the Central Bank of the Philippines in payment of income tax due against petitioner and remitted the same to the Bureau of Internal Revenue on June 10, 1989 (Exh. "C", p. 59, CTA records).

In a letter dated December 27, 1989, addressed to Elena Zalamea, Chief Accountant, Accounting Department, Central Bank of the Philippines, petitioner demanded the return of P21,702.00 which was deducted as withholding tax from the money value of his leave credits (Exhs. "D" and "D-1", pp. 60-61, CTA records). But instead of acting on the letter of petitioner, Central Bank referred the matter to the Commissioner Jose U. Ong of the Bureau of Internal Revenue on January 8, 1990 (Exh. "E", p. 65, CTA records).

Thus, on February 14, 1990 a formal claim for refund of the amount equivalent to the cash value of petitioner's accumulated vacation and sick leaves was filed before respondent Commissioner of Internal Revenue (Exh. "F", p. 70, CTA records).

Through a letter dated March 30, 1990 respondent denied petitioner's claim for refund (Annex "B", p. 4, CTA records). As a result it precipitated filing of the petition for review to this Court. Respondent through his Deputy Commissioner Eufracio D. Santos cited the original decision of the Suoreme Court in the case of **COMMISSIONER OF INTERNAL REVENUE vs. OSCAR R. VICTORINO and THE COURT OF TAX APPEALS**, G.R. No. 83176 as basis for the denial of the petitioner's claim (Annex "B", p. 4, CTA records).

At this instance, we find it important to clarify the correct claimable amount presented here by petitioner. In his Petition for Review the figure P21,702.00 was the amount claim. However petitioner in his memorandum dated May 27, 1992 claimed an entirely different and lesser amount of P16,016.72.

An examination of the evidences available on records will show that no document was introduce before this Court to support the claim of petitioner for P21,702.00. In contrast, petitioner formally offered as evidence Exhibit "C" which is the certification issued by Dolores E. Lachica, Accountant V, Accounting Department of the Central Bank of the Philippines, noted by Lourdes S. Bascor, Bank Executive Officer II, that the amount of P16,016.72 was withheld as income tax on the money value of accumulated leave credits of petitioner, and that the same was remitted to the Bureau of Internal Revenue on June 10, 1989 (p, 59, CTA records).

The issue posed on this appeal is whether or not the money value of the accumulated vacation and sick leave benefits is subject to withholding tax.

This Court in a number of cases has consistently ruled that the money value of terminal leave credits of retiring government employees is not subject to withholding tax.[1] The leading case of **Castaneda vs. Commissioner**, was upheld by the Court of Appeals in ***Commissioner of Internal Revenue vs. The Court of Tax Appeals & Efren P. Castaneda***, CA-FR SP No. 20482, September 26, 1990 and eventually affirmed by the decision of the Supreme Court when it denied the petition for review on certiorari filed by the BIR in *THE COMMISSIONER OF INTERNAL REVENUE vs. COURT OF*

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[1]See Efren P. Castaneda vs. Commissioner of Internal Revenue, C.T.A. Case No. 3809, February 4, 1987; Florencio E. Santos vs. Commissioner of Internal Revenue, C.T.A. Case No. 4004, November 18, 1987; Oscar R. Victorino vs. Commissioner of Internal Revenue, C.T.A. Case No. 4035, January 29, 1988; Alfonso B. Camillo vs. Commissioner of Internal Revenue, C.T.A. Case No. 2260, December 29, 1989; Marcos Z. Catalan vs. Commissioner of Internal Revenue, C.T.A. Case No. 4345, November 11, 1991; Maximo B. Castillo vs. Commissioner of Internal Revenue, C.T.A. Case No. 4346, November 11, 1991; Pacifico Torres vs. Commissioner of Internal Revenue, C.T.A. Case No. 4595; March 23, 1992; Artemio S. Tipon vs. Commissioner of Internal Revenue, C.T.A. Case No. 4548, July 6, 1992; Florencio Z. Jimenez vs. Commissioner of Internal Revenue, C.T.A. Case No. 4640, July 14, 1992.

APPEALS, 203 SCRA 71 (1991), the pertinent portion of the decision reads, thus:

> "Taxation; Withholding tax; Terminal leave pay; Terminal leave pay received by a government official or employee is not subject to withholding tax. - The Court has already ruled that the terminal leave pay received by a government official or employees is not subject to withholding (income) tax. In the recent case of **Jesus N. Borromeo vs. The Hon. Civil Service Commissioner, et. al.**, G.R. No. 96032, 31 July 1991, the Court explained the rationale behind the employee's entitlement to an exemption from withholding (income) tax on his terminal leave pay as follows: "xxx commutation of leave credits, more commonly known as terminal leave, is applied from by an officer or employee who retires, resigns or is separated from the service through no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrimpy. A modest nest egg which the senior citizen may look forward to is thus avoided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits."

Anent the allegation in respondent memorandum that petitioner's evidence are not sufficient to warrant the refund suffice it to say that when petitioner formally offered Exhibit "C", the bank certification of withholding tax, corroborated by other evidences like Exh. "B", the receipt by retirement benefits by petitioner, Exh. "D" and "D-1", the demand to return the tax withheld, and Exh. "E", the letter of the Central Bank stating that his claim was forwarded to the BIR, unobjected to by the respondent, will prove the authenticity of the tax withheld and the truthfulness of the claim for refund. Furthermore, Section 53 of the National Internal Revenue Code requires that "the taxes deducted and withheld by the withholding agent shall be held in trust as a special fund for the government xxx. The withholding agent is required to file the corresponding withholding tax return and pay the BIR the withheld taxes. For failure to render a return or for rendering false or fraudulent return and for non-payment of taxes withheld, corresponding surcharges and penalties shall be imposed against the withholding agent in addition to holding him personally liable for the surcharge and interest. xxx." In accordance with the above cited provision it is the primary responsibility of the respondent's withholding agent to remit the amount of tax withheld from petitioner. The contract of agency is between the respondent and the Central Bank of the Philippines acting as withholding agent. Any fault or negligence on the part of the withholding agent should not in any manner prejudice the taxpayer who has already been prejudiced by the continuous failure of the respondent to implement rulings of this Court and the higher Courts on similar cases without the necessity of resorting to a separate Court action.

WHEREFORE, in view of the clear pronouncement by the Supreme Court, respondent is hereby ordered to refund to petitioner the amount of P16,016.72 representing erroneously withheld tax from the money value of his terminal leave.

SO ORDERED.

Quezon City, Metro Manila, May 7, 1993.

ERNESTO D. ACOSTA

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members 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