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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4099

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 16 1997

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DECISION

Case at bar relates to this Court's DECISION promulgated in the above-entitled case, which on appeal, was AFFIRMED by the Court of Appeals, but which latter decision, also on appeal, was SET ASIDE by the Supreme Court and the case was REMANDED to this Court for further proceedings and appropriate action. Hence, in accordance with the said order of the Supreme Court, We render the instant decision.

As a background, the facts of the case are hereby narrated focusing mainly on the highlights of the decisions, and/or resolutions pronounced by the three courts, namely: the Court of Tax Appeals (CTA), the Court of Appeals (CA) and the Supreme Court (SC).

The promulgation on May 28, 1991 of this Court's decision (pp. 231-247, CTA rec.) opened the door for the present controversy.

The subject matter of the CTA decision was the refund claim of petitioner in the total amount of ₱19,971,745.00

representing overpaid income taxes for the years 1983, 1984 and 1985. As the refundable amount shown in petitioner's 1983 income tax return has already prescribed, this Court granted to petitioner only the reduced amount of P13,314,506.14.

Respondent first opposed the CTA decision by filing on August 12, 1991 a Motion for Reconsideration (pp. 250-253, CTA rec.). Her opposition was anchored on her argument that the certificates of tax withheld presented and offered by petitioner are not conclusive evidence of payment and remittance to the Bureau of Internal Revenue. She maintained that all tax payments must be duly receipted and the issuance of confirmation receipts is mandatory, She prayed that P13,314,506.14, the amount granted by the CTA in its decision, be further diminished to only P11,329,840.00 as the payments in the amount of P1,984,666.14 were not supported by confirmation receipts.

On October 1, 1991, respondent filed a Supplemental Motion for Reconsideration (pp. 267-269, CTA rec.) alleging an additional new ground that petitioner has outstanding deficiency income and business tax liabilities for 1984 in the total amount of P56,588,740.91. Respondent argued that due to these outstanding tax liabilities, petitioner is not entitled to any tax refund.

In denying respondent's Motion for Reconsideration, the CTA issued a Resolution (pp. 351-354, CTA rec.), dated December 3, 1991. It declared therein that the production of confirmation receipt is not required by law to prove the fact of remittance of withholding taxes. It stated further that Section 52(b) of the Tax Code, as implemented by Revenue Regulation 6-85, merely requires that the income received be declared as part of the gross income. It also added that to establish the fact of withholding, it is sufficient to present a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

In the same resolution, the issue on the existence of outstanding tax liabilities serving as a bar to an administrative granting of refund was also resolved by the CTA in favor of petitioner. The Court quoted petitioner's citation of portions of pertinent Supreme Court decisions, to wit (p. 353, CTA records):

> "The Rules of Court looking with disfavor on piecemeal argumentation, have provided the omnibus motion rule whereunder motion attaching a pleading or proceeding shall include all objection then available, and all objections not so included shall be deemed waived.
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> The salutary purpose of the omnibus motion rule is to obviate multiplicity of motions as well as discourage dilatory pleadings." **(Dacanay v. Aluendia, L-22633, October 31, 1969, 30 SCRA 31.)**

> "A matter not alleged in the pleadings cannot be proven. However if the evidence is adduced during the trial without any objection on the part of the other party, the latter cannot later on raise the objection on appeal." (**Balmes v. Suson, 28 SCRA 304.**)

Aggrieved by the denial of its motion for reconsideration, on January 22, 1992, the BIR filed a Petition for Review (pp. 363-382, CTA rec.) with the CA, praying for the reversal of the CTA decision.

Instead of a reversal, however, the CA affirmed the appealed decision. Its decision of July 31, 1992 (pp. 511-518, CTA rec.) adopted the findings of the CTA that the BIR miserably failed to rebut the documentary evidence presented by Citytrust. The BIR did not admit the veracity of the contents and the purpose of the certificates of withholding submitted by Citytrust. However, though it was in an advantageous position to determine the veracity of such documents, it failed to rebut the same. There was no evidence presented by the BIR to controvert the exhibits of Citytrust.

Similarly, the BIR was again in a better position to determine or check with its Tax Credit/Refund Division whether Citytrust had outstanding tax liabilities. Again, the BIR failed to do so. And as exactly worded by the CA in its decision, par. 2, p. thereof, to wit:

> "It took this case to be decided by the Court of Tax Appeals before the petitioner raised the issue of the tax deficiencies although it can be easily verified or inquired into with the Tax Credit Refund Division of the Bureau of Internal Revenue."

The CA, in the same decision, par. 1, p. 7, cited the well-settled rule that:

> "Findings of fact of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on appeals if they are not supported by substantial evidence or if there is a showing of gross error or abuse on the part of the Tax Court." **(Commissioner of Internal Revenue v. Court of Tax Appeals, 183 SCRA 402.)**

Lastly, the CA viewed the alleged deficiency assessments against Citytrust as not yet final, there being pending protest by Citytrust. As such, it cannot be legally possible to consider Citytrust a debtor of the government.

Based on the above-mentioned grounds, CA affirmed the decision promulgated by the CTA.

Consequently, on October 5, 1992 the BIR filed with the Supreme Court a Petition for Review (pp. 526-542, CTA rec.) alleging the same grounds raised in its appeal with the Court of Appeals, to wit: (1) Citytrust failed to prove and substantiate its claim for refund; and (2) the outstanding deficiency income and business tax liabilities for 1984 of Citytrust bar administrative processing of its claim for refund.

On July 21, 1994, the Supreme Court rendered its decision (pp. 771-782, CTA rec.) on the appeal lodged before it by the respondent Commissioner of Internal Revenue.

The Supreme Court made no direct ruling on the alleged failure of Citytrust to substantiate its claim. Seemingly related to this issue is the statement of the Supreme Court, that the BIR, by reason of the mistakes and/or negligence of its officials and employees, was denied its day in court. The BIR failed to present evidence due to the failure of the Banks/Financing and Insurance Division to submit its investigation report. There was also failure on the part of the Refund Audit Division of the BIR to transmit the records of the case to the counsel who was then handling the case in the Court of Tax Appeals. Consequently, as observed by the Supreme Court, the BIR counsel was constrained to submit its case for decision without presenting any evidence (pp. 7-8, SC decision, **"Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals," July 21, 1994, G.R. No. 106611, pp. 771-782, CTA rec.**).

It can be implied from the above statements that it was the BIR who failed to present evidence. However, as such failure was on account of the unavailability of the BIR records, the State, in the performance of its governmental functions, cannot be estopped by the neglect of its agent and officers, more particularly in matters involving taxes for the latter are the lifeblood of the nation.

It is in the light of the Supreme Court's belief that the BIR was denied of its day in Court, that the instant case was remanded to the Court of Tax Appeals for further proceedings.

With regard to the second issue, the Supreme Court ruled that to grant the refund without determination of the proper assessment and the tax due, would result in multiplicity of suits. Hence, according to the Supreme Court, it is logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with herein petitioner's claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

On August 17, 1994, Citytrust filed a Motion for Reconsideration (pp. 783-799, CTA rec.) with the Supreme Court stating therein that "the decision directs procedure which is a drastic deviation from that prescribed by the existing rules, thereby unduly effecting an amendment thereof without prior notice and publication."

In a resolution, dated January 23, 1995 (p. 814, CTA rec.), the Supreme Court denied with finality the motion for reconsideration of Citytrust.

Pursuant to such denial, hearings were conducted by the Court of Tax Appeals for the reception of petitioner's (Citytrust's) evidence. And one of the exhibits presented and offered by petitioner was Exhibit "Z" (p. 830, BIR rec.), the letter, dated February 28, 1995, signed by the Commissioner of Internal Revenue, stating the withdrawal and cancellation of the following assessments, to wit:

Kind of Tax	Year Involved	Amount
1. Def. Fixed Tax	1984	P 44,132.88
2. Def. Withholding Tax on deposit substitutes (1-1-84 to 10-14-84)	1984	22,363,791.31
3. Def. Withholding Tax on deposit substitutes (10-15-84 to 12-31-84)	1984	11,292,140.50
4. Def. Documentary Stamp Tax on deposit substitutes	1984	17,825,342.30

However, the same letter demands from Citytrust payment of the amounts P3,301,578.19, P1,193,090.52 and P14,625.00 as deficiency income tax, deficiency gross receipts tax and fixed tax as real estate dealer for the year 1984.

Consequently, Citytrust settled only the above-mentioned deficiency tax liabilities. It formally offered (pp. 826-829, CTA rec.) as proofs of payment the following exhibits, to wit:

Exhibits	Description	Purpose
"AA"	Photocopy of Authority to Accept Payment No. 2233270, dated July 11, 1995	To prove full payment of deficiency fixed tax
"AA-1"	Machine validation found at the lower right portion of "AA"	To prove that the payment for deficiency fixed tax has been received by the United Coconut Planter's Bank (UCPB), Makati Ave. Branch
"BB"	Photocopy of Authority to Accept Payment No. 2233274, dated July 11, 1995	To prove full payment of deficiency gross receipts tax
"BB-1"	Machine validation found at the lower right portion of "BB"	To prove that the partial payment for deficiency gross receipts tax has been received UCPB, Makati
"CC"	Photocopy of Authority to Accept Payment No. 2233271, dated July 11, 1995	To prove that there has been partial payment of income tax
"CC-1"	Machine validation found at the lower right portion of "CC"	To prove that the partial payment for deficiency gross receipts tax has been received UCPB, Makati

It will be noted from the above that the deficiency fixed tax and gross receipts tax were fully paid. The deficiency income tax was only partially settled when petitioner paid only the amount of P2,405,940.90 as explained by Citytrust in its Memorandum, page 16 thereof (p. 934, CTA rec.), this amount was arrived at by excluding the expenses allocable to non-taxable income from the tax base. Thus:

Net income per return		P13,501,522.00
Add:		
FCDU expenses	P1,481,391.49	
Trading loss	2,786,361.00	
Total Additions		4,267,752.49
Taxable net income per review		P17,769,274.49
Tax due thereon		P 6,219,246.09
Less:		
Tax due per return		P 4,715,533.00
Deficiency Tax		P 1,503,713.07
Add:		
20% interest from 4.15.85 to 4.15.88		902,227.83
Total amount due		P 2,405,940.90

Whether or not expenses allocable to non-taxable income are deductible from the tax base is an issue which petitioner has raised in a separate proceeding, CTA Case No. 5261 entitled "Citytrust Banking Corporation v. The Commissioner of Internal Revenue," which is still pending before this Court.

Except for this pending issue in CTA Case No. 5261, petitioner considers all its deficiency tax liabilities for 1984 as fully settled, and therefore prays to this Court that it now be awarded the refund of the amount of P13,314,506.14 as its overpaid income tax for the years 1984 and 1985.

Again, the BIR interposed objection to the grant of such refund. It alleged that there are still deficiency income, business and withholding taxes proposed against petitioner for 1985 (p. 4, TSN, April 25, 1996; p. 877, CTA rec.). These assessments are contained in a Delinquency Verification Slip, dated June 5, 1990, which was marked as Exh. "5" for respondent (p. 134, BIR rec.). Due to these deficiency assessments, respondent insisted that petitioner is not entitled to any tax refund.

This Court sets aside respondent's objection and grants to petitioner the refund of the amount of ₱13,314,506.14 on several grounds.

First, it violates the order of the Supreme Court in directing this Court to conduct further proceedings for the reception of petitioner's evidence, and the disposition of the present case. Although the Supreme Court did not specifically mention what kind of petitioner's evidence should be entertained, this Court is of the opinion that the evidence should pertain only to the 1984 assessments which were the only assessments raised as a defense on appeal to the Court of Appeals and the Supreme Court. The assessments embodied in Exhibit "5" of respondent were never raised on appeal to the two higher Courts. Hence, evidence related to said assessments should not be allowed as this will lead to endless litigation.

Second, this Court has no jurisdiction to try an assessment case which was never appealed to it. With due respect to the Supreme Court's decision, it is the Court's firm stand that in hearing a refund case, the CTA cannot hear in the same case an assessment dispute even if the parties involved are the same parties. Thus, in a resolution promulgated on August 31, 1995 in CTA Case No. 4231 entitled **"Chemo-Technische Manufacturing, Inc. v. The Commissioner of Internal Revenue,"** this Court stated the following:

> "Our second reason why we refuse to take cognizance of petitioner's deficiency tax assessment is that to do so would create utter confusion among taxpayers. It is of common knowledge that the laws or rules governing claims for refund are separate or distinct from those applicable to assessment appeals. For example, the period of time to appeal a refund case is within (2) years from the date of payment, while the filing of an assessment appeal requires the observance of thirty (30) days from the date of receipt of denial of protest. Using this example for illustration, let us take a taxpayer who has an erroneously paid capital gains tax in August 1992. Sometime in August 1994, an assessment was issued against him for deficiency income tax for the same taxable year. Supposing, he immediately protested the said assessment but the BIR did not immediately act on his protest, will he still wait for the B.I.R.'s decision before he can go to this Court to file his claim for refund? What about if the two-year period to appeal his refund is nearly to expire, will he still wait indefinitely for the decision on his protest, so he can file both suits simultaneously with this Court? Of course, the answer will be No.
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> Now, let us reverse the scenario. Supposing, the B.I.R.'s assessment came first but this time no protest was made by the taxpayer. hence, the assessment became final and executory and so, the B.I.R. filed a collection case in the regular

> trial court. During the pendency of the collection suit, taxpayer discovered that he made an erroneous payment of a different kind of tax. To avoid multiplicity of suits, will the B.I.R. allow the taxpayer to ventilate his claim for refund in the same collection case? Of course, the B.I.R. will object on the ground of jurisdiction." (Resolution, August 31, 1995, CTA Case No. 4231, pp. 7-8)

The resolution of this Court is founded on the rejection by the Supreme Court of the "doctrine of equitable recoupment", in the case of **Collector v. UST (10 Phil. 1062)**, saying that it was not convinced of the wisdom and propriety thereof, and that it may work to tempt both the collecting agency and the taxpayer to delay and neglect their respective pursuits of legal action within the period set by law. This case is followed by **Republic v. Mambulao Lumber Co. (6 SCRA 622)** where the Supreme Court enunciated the rule that taxes are not subject to set-off or legal compensation.

WHEREFORE, in view of all the foregoing, this Court grants the refund sought by petitioner. Respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of P13,314,506.14 as its overpaid income tax for the years 1984 and 1985

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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
Court of Tax Appeals