REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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METROPOLITAN BANK AND TRUST COMPANY, Petitioner,	**C.T.A. CASE NO. 6765**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 02 2008 2:15pm

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AMENDED DECISION

CASANOVA, *J.*:

This Court shall resolve petitioner's "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" of this Court's Decision dated August 13, 2007, filed on September 7, 2007 and November 19, 2007, respectively.

A recapitulation of the facts is as follows:

On June 5, 1997, Solidbank Corporation (together with other local and foreign banks) forged an Omnibus Agreement with Luzon Hydro Corporation (LHC) wherein the former extended a foreign currency denominated loan with principal amount of US$123,780,000.00 to the latter. Under the agreement, LHC will shoulder all corresponding internal revenue taxes required by law to be deducted or withheld on the loan. On September 1, 2000, petitioner became the successor-in-interest of Solidbank Corporation.

On the following dates, LHC made the following payments to petitioner (principal and interest) and the Bureau of Internal Revenue (final tax on interest income):

	Principal	**Interest**	**Final Tax Paid to BIR**	**Peso Equivalent of Final Tax**
March 2, 2001	US$902,545.47	US$635,576.70	US$63,106.40	P3,060,029.24
October 31, 2001	US$902,545.45	US$430,722.86	US$43,072.29	P2,236,743.81

Petitioner, however, allegedly remitted to the Bureau of Internal Revenue (BIR) the same final withholding taxes when it included the foreign currency denominated interest income in its Monthly Remittance Returns of Final Income Taxes Withheld for the corresponding months. Thus, petitioner filed an administrative claim for refund of the two amounts with the BIR on December 27, 2002 and a "Petition for Review" with this Court on September 10, 2003.

On August 13, 2007, the Court promulgated the *Decision* wherein it denied the petition on grounds of prescription (on petitioner's claim for refund of the amount of P3,060,029.24 for March 2, 2001) and insufficiency of evidence (on petitioner's claim for refund of the amount of P2,236,743.81 for October 31, 2001). Evidence was insufficient because the Court cannot verify whether or not the subject claim for refund of P2,236,743.81 was included in the amount of P1,569,842,417.00; the amount not subjected by petitioner to the 10% final tax and deducted as "Exempt/tax paid income/income wherein counterparty shoulders the related tax" from its gross onshore income.

In the *Resolution* dated November 14, 2007, the Court resolved petitioner's "Motion for Reconsideration" filed on September 7, 2007, affirming its denial of the

P3,060,029.24 claim on the ground of prescription, but re-opening the case with respect to the P2,236,743.81 claim to give petitioner an opportunity to present additional evidence.

After a thorough review and examination of the "Motion for Reconsideration" and the documents presented, the Court finds the same meritorious.

A perusal of the schedule shows the breakdown of tax exempt/tax paid onshore interest income for the year ended December 31, 2001[1], as follows:

a. Interest Income-Tax Exempt IBODI (ROP/BSP)	1,315,696,871.00
b. Interest Income-Deposit in Local Banks	39,600,398.54
c. Interest Income-Deposit in Foreign Banks	3,578,656.35
d. Interest Income-Due from BSP	123,070,202.44
e. Interest Income where Counterparty Withheld and Directly Remitted Related Tax	87,896,288.60
TOTAL	**1,569,842,416.93**

As testified by petitioner's witness and senior manager, Mr. Jesus Pangan, interest income coming from LHC did not form part of interest income-tax exempt IBODI (ROP/BSP)[2], deposit in local and foreign banks, and due from BSP.[3] More importantly, said income did not form part of "Interest Income where Counterparty Withheld and Directly Remitted Related Tax" upon showing by petitioner of the following breakdown[4]:

Name of Company	Reference	Date Paid	Tax Base	10% Onshore
PLDT	LBP East Ave.	12/1/2001	1,608,617.70	160,861.77
PLDT	Citibank	11/12/2001	5,048,473.20	504,847.32
PLDT	DBP-East Ave.	4/25/2001	3,013,655.10	301,365.51
PLDT	Citibank	3/26/2001	16,780,592.50	1,678,059.25
PLDT	LBP East Ave.	9/25/2001	13,052,331.00	1,305,233.10
PLDT	Citibank	5/25/2001	7,597,442.90	759,744.29
PLDT		6/25/2001	3,481,766.60	348,176.66
Citra Metro Manila Tollways Corp.		12/26/2001	37,313,409.60	3,731,340.96
TOTAL			**87,896,288.60**	**8,789,628.86**

[1] Exhibit "A-Motion for Reconsideration", *Rollo,* page 389
[2] IBODI-Interest in Banks and Other Debt Instrument; ROP-guaranteed by the Republic of the Philippines
[3] TSN, February 7, 2008, pages 14 to 17
[4] TSN, February 7, 2008, pages 17 to 18

Instead, the interest income from LHC can be found in the account of "Loans and Discount–FCDU/EFCDU-Onshore" amounting to P1,481,268,339.72 of the "Schedule of Onshore and Offshore Income For the Year Ended December 31, 2001"[5], as shown in the "Breakdown of Interest Earned as of December 31, 2001"[6]. As testified by Mr. Pangan, petitioner paid the final taxes on all the accounts in the "Breakdown of Interest Earned as of December 31, 2001"[7].

However, this Court still maintains its observation in the Decision that there is a discrepancy of $125,428.26 between the interest income of $1,061,786.84 as alleged by petitioner in its pleadings and that contained in the "Loans and Discount–FCDU/EFCDU-Onshore" in the amount of $936,358.58 (or P48,400,375.00). Considering that the basis for the remittance of the final tax is the latter amount of $936,358.58 (or P48,400,375.00), and that petitioner failed to show how much of that amount pertains to the remittances for March and October, this Court is constrained to deduct the entire amount of $635,576.70 pertaining to the March interest income on loan granted to LHC from the $936,358.58. The remaining $300,781.88 (or P15,592,532.66)[8] shall become the basis of the refund of the final tax of ten percent (10%) for the October 2001 remittance. Thus, petitioner is entitled to the refund of the amount of P1,559,253.27, representing the final tax on interest income it overpaid for the month of October 2001.

In the light of the foregoing considerations, the Court finds legal and factual bases to render this Amended Decision, pursuant to Section 3, Rule 14 of the Revised Rules of Court of Tax Appeals, partially granting petitioner's "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" of this Court's Decision dated August 13, 2007.

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[5] Exhibit "C-Motion for Reconsideration", *Rollo*, page 390
[6] Exhibit "D-1 Motion for Reconsideration", *Rollo*, page 392
[7] TSN, February 7, 2008, page 31
[8] Conversion of US$1=P51.84 is found in Exhibit "FF-1", *Rollo*, page 243.

WHEREFORE, petitioner's "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" are hereby **PARTIALLY GRANTED** and this Court's Decision promulgated on August 13, 2007 in the instant case is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P1,559,253.27, representing the overpayment of the final tax on interest income for October 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division