Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

FIRST MALAYAN LEASING AND FINANCE CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6428

Members:

Castañeda, Jr., *Chairperson*
Uy, and
Palanca-Enriquez, *JJ*.

Promulgated:

NOV 10 2005 [signature]

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DECISION

CASTAÑEDA, JR., *J*.:

THE CASE

One of the general principles of income taxation in the Philippines is that a domestic corporation is taxable on all income derived from sources within and without the Philippines.[1] However, our tax law also provides that intercorporate dividends shall not be subject to tax. The Court is now called upon to rule upon the taxability of cash dividends

1 Paragraph (F), Section 23 of the 1997 NIRC.

415

which petitioner paid to various Rizal Commercial Banking Corporation ("RCBC") Trust Funds.

On March 8, 2002, petitioner filed before the Court a Petition for Review and prays for the granting of its claim for refund or issuance of a tax credit certificate in the amount of **FIVE HUNDRED FIFTY EIGHT THOUSAND THREE HUNDRED SIXTY THREE PESOS AND SIXTY NINE CENTAVOS** (₱558,363.69) representing the tax withheld from the cash dividends declared and paid to various RCBC Trust funds.

THE FACTS

Borne by the Joint Stipulation of Facts and evidence on record, the uncontroverted facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at the 5/F Grepalife Building, Sen. Gil Puyat Avenue, Makati City.[2]

Respondent is a duly organized appointed Commissioner of Internal Revenue vested by law to enforce and implement the provisions of the National Internal Revenue Code as well as related statutes and their implementing rules and regulations, including *inter alia*, the power and authority to act and decide upon applications for refund or tax credit of excess internal revenue tax payments, to issue deficiency tax assessment, evaluate and decide upon merits disputed assessment pursuant to law, with office address at Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.[3]

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2 Joint Stipulation of Facts and Issues, par. 1; docket, p. 47.
3 Joint Stipulation of Facts and Issues, par. 2 docket, p. 47.

416

In a regular meeting of the petitioner's Board of Directors held on December 17, 1999, a resolution was unanimously passed and approved whereby petitioner was authorized to declare 30% cash dividend and 30% stock dividend to be paid out of its unrestricted retained earnings as of December 31, 1998 to all stockholders of record as of December 15, 1999. Such resolution was affirmed by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the petitioner in a special stockholders' meeting immediately held after the meeting of the Board of Directors.[4]

Director Candon B. Guerrero of the Department of Thrift Banks and Non-Bank Financial Institutions of the Bangko Sentral ng Pilipinas wrote to Mr. Henry S. Valdez, president of the petitioner, approving the payment of the cash dividend amounting to ₱52,754,928.00 to petitioner's stockholders of record as of December 15, 1999 subject to certain conditions.[5]

On December 17, 1999, the petitioner declared cash dividends and paid to various RCBC Trust Funds. The list of corporate stockholders, dividend and withholding tax is reproduced hereunder as follows:[6]

NAME	Account Holder	DIVIDEND	WITHHOLDING TAX
RCBC Trust Account No. 75-265-7	Malayan Insurance Co., Inc., Phil. Fuji Xerox; Pacific Plans, Inc.; IFC Dev't. Corp.; Tokio Marine Insurance; First Malayan Leasing; Pacific Memorial Plan, Inc.; House of Investments	810,000.00	121,500.00
RCBC Trust Account No. 52-027	Pacific Plans, Inc.	677,176.20	101,576.43
RCBC Trust Account No. 75-192-8	IFC Dev't. Corp. (Head Office)	480,575.85	72,086.38
RCBC Trust Account No. 72-218-9	NO CERTIFICATION*	81,991.65	12,298.75

4 BIR Records, p. 13.
5 Exhibit "B".
6 Exhibits "G" to "J".

417

RCBC Trust Account No. 72-218-9	NO CERTIFICATION*	388,224.90	58,233.74
RCBC Trust Account No. 75-178-2	Pacific Plans, Inc.	330,000.00	49,500.00
RCBC Trust Account No. 52-027-6	Pacific Memorial Plans, Inc.	258,000.00	38,700.00
RCBC Trust Account No. 75-159-6	Great Pacific Life Assurance Corp.	190,500.00	28,575.00
RCBC Trust Account No. 75-263-0	Tokio Marine Insurance	123,000.00	18,450.00
RCBC Trust Account No. 75-161-8	Malayan Insurance Co., Inc.	111,000.00	16,650.00
RCBC Trust Account No. 75-174-1	Phil. Fuji Xerox	76,500.00	11,475.00
RCBC Trust Account No. 75-139-1	Eastern General Reinsurance	57,000.00	8,550.00
RCBC Trust Account No. 75-163-4	Pan Malayan Mgt. & Invt. Corp.	37,500.00	5,625.00
RCBC Trust Account No. 75-260-6	Pan Pacific Computer Ctr. Inc.	37,500.00	5,625.00
RCBC Trust Account No. 76-216-4	Malayan Income Fund, Inc.	18,000.00	2,700.00
RCBC Trust Account No. 75-193-6	IFC Dev't. Corp. (Branches)	15,000.00	2,250.00
RCBC Trust Account No. 72-214	NO CERTIFICATION*	12,295.20	1,844.28
RCBC Trust Account No. 75-265	Malayan Insurance Co., Inc.	6,147.60	922.14
RCBC Trust Account No. 75-160	Great Pacific Life Assurance Corp.	6,147.60	922.14
RCBC Trust Account No. 75-281-1	Pacific Memorial Plan, Inc.	5,865.60	879.84
		3,722,424.60	**558,363.69**

(* as appearing on the Certification marked as Exhibit "K")

On March 10, 2000, petitioner filed before the BIR a Monthly Remittance Return of Income Taxes Withheld (BIR Form No. 1601) which reflected the amount of ₱763,664.27 as amount paid and remitted to the BIR. A corresponding official receipt (no. 389424) was issued by the RCBC showing that petitioner paid the amount of ₱763,664.27 representing the withholding tax due from the dividends declared and distributed to the various RCBC Trust Funds.

On April 17, 2000, Erlina S. Benitez, the head of the Trust Custodianship Unit of the Rizal Commercial Banking Corporation wrote to petitioner's Operations Head, Alfredo A. Baria, regarding the claims of the stockholders/beneficial owners of the various RCBC trust accounts for the taxes withheld from them.[7]

On the premise that intercorporate dividends shall not be subject to tax by virtue of Section 27(D)(4) of the National Internal Revenue Code of 1997 ("Tax Code"), petitioner

[7] Exhibit "F"; docket, p. 99.

418

refunded the said amount to RCBC Trust Funds. Also, petitioner filed with the Bureau of Internal Revenue on June 19, 2000 a claim for refund of the erroneously withheld tax.[8]

On June 21, 2000, Revenue District Officer Arturo V. Parcero issued a Tax Verification Notice informing the petitioner that Revenue Officer Rosanna Baduria was authorized to verify the supporting documents and/or pertinent records relative to its claim for withholding tax credit and/or refund.[9]

Chief Carmelita SJ. Pascual of the Revenue Accounting Division of the BIR issued on September 14, 2000 a certification, which reads:[10]

> "This is to certify that the collections listed hereunder were verified and found included in the RDC-Makati City data file as follows:
>
> "Name of Taxpayer: FIRST MALAYAN LEASING AND FINANCE CORPORATION

BCS No.	DATE	BANK CODE	AMOUNT	LIST OF 12.58 VERIFIED	TYPE OF TAX
A-00051	3/10/2000	026-000	P176,901.56	03/00-07-00	W/holding Tax Compensation
A-00051	3/10/2000	026-000	586,762.61	03/00-07-00	W/holding Tax-Expanded

> "This is to further certify that the collections listed above representing payment of taxes were remitted per CRDC and Central Bank Credit Advice and were not included in the schedules of dishonored checks on file with this Division."

In a Memorandum dated November 22, 2000 sent to the Regional Director of Revenue Region No. 8 of the Bureau, Revenue Attorney III Wilmer B. Dekit recommended for the issuance of tax credit certificate in the amount of ₱558,363.69 in favor of the petitioner.[11]

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8 Exhibit "N"; *ibid.*, p. 112.
9 Exhibit "O"; *ibid.*, p. 113.
10 Exhibit "E"; *ibid.*, p. 98.
11 BIR Records, pp. 54-55.

49

Subsequently, or on April 10, 2001, the Chief of the Legal Division, Cesar A. Pangilinan, sent respondent a memorandum finding merit on the claim for refund and/or tax credit and recommending that a tax credit certificate in the amount of ₱558,363.69 be issued in favor of the petitioner.[12] Revenue Officer I Rosanna F. Baduria recommended for the approval of the petitioner's request for a tax credit certificate on the erroneous withholding tax payment.[13]

Assistant Commissioner Nora E. Tamayo of the Assessment Service returned to Director Antonio I. Ortega, Revenue Region No. 8 (Makati City), the entire docket and noted that: (1) the corporate owners of the trust accounts enumerated in the certification issued by RCBC did not fully reconcile with the rest of the corporate stockholders from whom the taxes sought to be credited/refunded were erroneously withheld; and (2) there is no clear showing of the nature of the trust accounts (whether revocable or irrevocable) to obviate its taxability as an individual person and not as a corporation under Section 61 of the Tax Code.[14]

To date, respondent neither granted nor has acted on the claim for refund of petitioner, hence, this petition pursuant to Section 229 of the 1997 Tax Code.

THE ISSUES

Both parties agreed to submit the following issues for the Court's determination:

1. Whether or not petitioner made an erroneous payment of withholding tax in the amount of P558,363.12.

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12 Exhibit "P".
13 Exhibit "T".
14 BIR Records, p. 60.

420

2. Whether or not the cash dividends paid to various RCBC Trust Funds by petitioner is not subject to withholding tax under Section 27 (D) (4) of the 1997 Tax Code.

3. Whether or not petitioner's instant claim for refund in the sum of P558,363.69 as alleged erroneously withheld tax on cash dividends paid to various RCBC Trust Funds was duly substantiated.

4. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the sum of P558,363.69 as alleged erroneously withheld tax on cash dividends paid to various RCBC Trust Funds.

THIS COURT'S RULING

It is uncontested that dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.[15] The Court, however, holds the view that, based from the attendant facts of the present case, petitioner is not entitled to its claim for refund.

We do not subscribe to petitioner's argument that Section 27(D)(4) of the said Code is applicable. It reads:

> (4) *Intercorporate Dividends* – Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.

First, the various RCBC trust accounts are not domestic corporations within the purview of Our existing laws.

Section 2 of the Corporation Code defines a corporation as "an artificial being created by operation of law, having the rights of succession and the powers, attributes and properties expressly authorized by law or incident to its existence." Under Section 22(C)

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[15] Paragraph D (4), Section 27 of the 1997 NIRC.

421

of the Tax Code, in relation to the above definition, a domestic corporation is when a corporation is created or organized in the Philippines or under its laws.

The records of the case show that the various corporations, were not the recipients of the cash dividends but rather the RCBC trust accounts together with other stockholders. Otherwise stated, the RCBC trust accounts are the real stockholders of petitioner. This fact is evidenced by the stocks certificates issued by petitioner not in the name of the corporations but in the name of various RCBC trust accounts.[16]

Second, as there is no domestic corporation to speak of, the cash dividends received by the RCBC trust accounts are not inter-corporate dividends.

Dividends must be understood as:[17]

> "A stock corporation exists to make a profit and to distribute a portion of the profits to its stockholders. A dividend is that portion of the profits of a corporation set aside, declared and ordered by the directors to be paid ratably to the stockholders on demand or at fixed time. It is payment to the stockholders of a corporation as a return upon their investment. xxx The term dividend indicates that there must be a surplus or profits to be divided. xxx"

RCBC, being a trust entity, may invest the trust funds it administers and manages for the various corporations subject to certain limitations and unless otherwise directed by the trust agreements.[18] As the trust accounts are not "domestic corporations," the cash dividends distributed by petitioner cannot logically be considered as intercorporate dividends exempt from tax under Section 27 (D)(4) of the Tax Code.

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[16] See Exhibits "GG" to "GG-41."
[17] *Villanueva*, Philippine Corporate Law, pp. 572-573, 2001 ed.
[18] Section 88 of R.A. No. 8791 ("The General Banking Law of 2000").

We reiterate Our foreword that a domestic corporation is taxable on all income derived from sources within and without the Philippines under Paragraph (D), Section 23 of the Tax Code. In fact, Section 27 of the same Code exclusively deals with the rates of income tax imposed on domestic corporations. Paragraph (D) thereof provides for the rates of tax on certain passive incomes of domestic corporations. We quote:

> (1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties.* – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or **any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations**, and royalties, derived from sources within the Philippines: *Provided, however*, That interest income derived by a domestic corporation from a depositary bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7 ½%) of such interest income. [Emphasis supplied.]

It is clear from the established facts and the provisions of our tax law that such form of income is taxable and that the person who earned such income is liable to pay income tax. In an old case of *Fisher vs. Trinidad*,[19] the Supreme Court gave us definitions of "income" as follows: "The New Standard Dictionary, edition of 1915, defines an income as 'the amount of money coming to a person or corporation within a specified time whether as payment for services, interest, or profit from investment.' Webster's International Dictionary defines an income as 'the receipts, salary; especially, the annual receipts of a private person or a corporation from property.' Bouvier, in his law dictionary, says that an 'income' in the federal constitution and income tax act, is used in its common or ordinary meaning and not in its technical or economic sense. xxx Mr. Black in his law

[19] 43 Phil. 973.

923

dictionary, says 'An income is the return *in money* from one's business, labor, or capital invested; gains, profit, or private revenue.'"

Petitioner declared and paid cash dividends out of its unrestricted retained earnings to its stockholders, which include the various RCBC Trust Funds. It is clear that the said cash dividends are monetary benefit from the trust funds which the Rizal Commercial Banking Corporation ("RCBC") manages and administers in favor of the various companies.

In declaring and distributing cash dividends, the High Tribunal further elucidated in *Fisher* case that it is "a disbursement to the stockholders of accumulated earning, and the corporation at once parts irrevocable with all interest therein. xxx When a cash dividend is declared and paid to stockholders, such cash dividend is declared and paid to the stockholder, such cash becomes the absolute property of the stockholder and cannot be reached by the creditors of the corporation in the absence of fraud. xxx **The rule is well established that cash dividends, whether large or small, are regarded as 'income' xxx.**"

Income in tax laws is defined as "amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment". Likewise, it means cash or its equivalent; gain derived and severed from capital, from labor or from both combined. An important factor to determine when an income is taxable is whether any gain or profit was derived from a transaction. **The rule is profits derived from capital invested cannot escape income tax.**[20]

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20 *Commissioner of Internal Revenue vs Court of Appeals*, 301 SCRA 152.

424

It is a horn-book doctrine that "the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied."[21] The claimant must show the legislative clearly intended to grant such exemption from tax. Petitioner, in the present case, failed to discharge its burden of proving that it is entitled to a refund granted under Section 27 (D)(4) of the Tax Code. The Court must deny perforce the petitioner's claim for refund.

WHEREFORE, premises considered, the Petition for Review is hereby ***DISMISSED*** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[21] *Luzon Stevedoring Corporation vs Court of Tax Appeals*, 163 SCRA 647.

425

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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