REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY,
as Trustee of Various Retirement Funds,
Petitioner,

- versus -

C.T.A. CASE NO. 5646

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 25 2000

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DECISION

Before Us for consideration is a Petition for Review seeking for a refund in the original amount of P2,114,167.91 pertaining to taxes on interest income allegedly withheld erroneously and paid by the Petitioner to the Respondent for the year 1997 arising from investments in government securities made by Petitioner as trustee of various retirement funds. In its memorandum however, Petitioner increased its claim for refund to P2,677,972.90.

The antecedent facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines. Authorized to engaged in trust and investment activities, it was appointed as trustee by various companies to provide retirement, death, disability and separation benefits to members of the companies' retirement plans. These retirement plans have allegedly met the requirements of a reasonable plan as provided under Republic Act 4917 (An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax Whatsoever), and were allegedly certified by the Bureau of Internal Revenue as exempt from taxes.

Pursuant to the trust agreements, Petitioner, acting as trustee, invested assets of the funds in various interest earning placements, more particularly, in government securities, bank deposits and deposit substitute instruments that earned interest income. Petitioner alleged that 20% final taxes were withheld from the interest income earned by the retirement funds for the said period.

Believing that the retirement funds were tax exempt, Petitioner filed with the Bureau of Internal Revenue separate administrative claims for refund of an aggregate sum of P2,116,985.19 allegedly representing 20% final taxes erroneously withheld from passive interest income earned by the retirement funds for the four quarters of 1997 broken down as follows:

Exh.	1997	Date Filed with the BIR	Amount of Claim
B	1st quarter	6/17/97	P 583,497.89
C	2nd quarter	8/11/97	332,038.07
D	3rd quarter	11/17/97	842,277.15
E	4th quarter	2/3/98	359,172.08
		Total:	P 2,116,985.19

Failing to obtain an immediate and affirmative relief from the Respondent B[illegible] Petitioner elevated its case to this Court on June 19, 1998 via Petition for Review.

On July 9, 1998, Respondent filed his Answer and interposed the following Special and Affirmative Defenses, to wit:

> 5. The petition states no cause of action as it does not allege the date/s when the tax sought to be refunded was/were actually paid. (Manufacturer's Bank and Trust Co. as Trustee for Gen. Trust Plan vs. CIR, CTA Case No. 1659, November 29, 1965);
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> 6. The best evidence of payments and remittances of alleged taxes withheld are the official receipts or equivalent which are however not visible in the instant case;
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> 7. It is a familiar and well-settled rule that claims for refund of taxes such as the herein petition are construed strictly against claimants, the same being in the nature of exemption from taxes. (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95, 1970 and Manila Electric Co. vs. CIR, 67 SCRA 35, 1975).

This case presents no novel legal issue for well-settled is the rule that the income tax exemption of qualified employee retirement plans/funds as provided under Section 53(b) of the Tax Code in relation to Republic Act No. 4917 includes exemption from payment of the final tax imposed on interest income from bank deposits or yield from deposit substitutes. Thus, as correctly cited by the Petitioner in its memorandum, in **Commissioner of Internal Revenue vs. The Honorable Court of Appeals, et. al., G.R. No. 95022, 23 March 1992,** the Supreme Court ruled in this wise:

> "There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[B], now 53[b], Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes in requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place."

The legal issue having been settled in the affirmative, We are now posed to proceed to Petitioner's compliance with the substantiation rule.

A cursory review of pertinent occasions in this case reveals that the instant claim for refund was filed within the two-year period of prescription pursuant to Section 230 (now Section 229) in relation to Section 51 (now Section 58) of the Tax Code which provides, thus:

> **Section 230.** ***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.
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> In any case, no such suit or proceeding shall be begun 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.
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> **Section 51.** ***Returns and Payment of Taxes Withheld at Source*** –
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> "(A) *Quarterly Returns and Payments of Taxes Withheld.* - Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

"The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

"The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided,* That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government."

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Thus, reckoned from the 25th day after the close of each calendar quarter of 1997 covered by the instant petition to June 19, 1998, the date when the petition for review was filed, Petitioner's claim for refund was seasonably filed within the two-year prescriptive period.

However, while we concede that the Petitioner complied with the statutory requirement within which to file its claim for refund, this Court, after a thorough scrutiny of Petitioner's documentary evidence, is inclined to grant the claim but in a reduced amount. Documentary evidence for the Petitioner reveals that it was able to substantiate only the amount of P1,925,491.45 out of the total claim for refund of P2,114,167.91.

A cursory review of the records of this case shows that, at its inception, SGV & Co., the auditing firm commissioned by this Court pursuant to CTA Circular [illegible] recommended the amount of P2,[illegible]77,972.70 (Exh. EE-2-a) as Petitioner's refundable [illegible] taxes withheld in 1997 on interest income of retirement funds with available Tax Exemption Certificates (TEC's). However, in the instant petition, Petitioner was originally seeking a refund of only P2,114,167.91. It was only in its memorandum where it asserts its alleged entitlement to the amount of P2,677,972.70. It must be noted that the total amount claimed by the Petitioner with the Bureau of Internal Revenue is only P2,116,985.19 which was slightly reduced to P2,114,167.91 in the Petition for Review. Well-settled is the rule that a taxpayer cannot claim an amount in the judicial level that is more than what was prayed for in the administrative level (BIR) pursuant to the clear wordings of Section 230 (now Section 229) of the Tax Code which provides in part, thus:

> "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, <u>until a claim for refund or credit has been duly filed with the Commissioner;</u> x x x x x x". (Underscoring supplied)

Be that as it may, Petitioner was only able to prove and substantiate the actual withholding and remittance to the Bureau of Internal Revenue the amount of P1,925,491.45 representing final taxes withheld on the interest income of tax-exempt retirement funds from Treasury Bills/Cash management Bills/Special T-bills based on the certification issued by the Bangko Sentral ng Pilipinas to Petitioner for taxable year [illegible] (Exhs. FF to FF-2-9, inclusive), thereby rendering Petitioner's as[illegible] for a [illegible] amount moot and academic.

A painstaking verification of Petitioner's documents supporting [illegible] recommended amount of P2,677,972.70 reveals that the retirement fund of Alfa [illegible] Raco (Phils.), Inc. with a corresponding claim of P34,207.06 has no tax exemption certificate but merely an application for tax exemption (TEC-22), hence, must be deducted from the recommended amount. Concededly, the retirement funds related to the remaining claim of P2,643,765.64 have tax exemption certificates. Furthermore, these tax exemption certificates, including those filed under CTA case Nos. 4848 and 5535 supporting the retirement funds (Exh. EE-4) covered under the claimed amount of P2,643,765.64 show that the funds' respective retirement funds were certified by the BIR as qualified or tax-exempt plans. The said retirement funds, by reason of the qualification or tax-exempt status of the plans for which they were set-up, are thus expressly exempt from income tax. However, it is necessary that the aforesaid tax-exempt retirement funds must be under trust with the Petitioner, otherwise, the same shall be excluded from the claim.

Records show that the following tax-exempt retirement funds are not under trust with the herein Petitioner, to wit:

Retirement Fund	Trust Acct . No.	Tax Refund Claim
Sea Commercial Co., Inc. Emp. Ret. Plan	201-00029	P 129.68
California Mfg. Co., Inc. Emp. Ret. Plan	201-00150	352.92
Hoechst Group of Cos. Emp. Ret. Plan	202-00005	6,260.91
Centro Escolar University	203-00008	65.88
Tag Fibers, Inc. Emp. Ret. Plan	203-00025	162.04
Phil. Clearing House Corp. Emp. Ret. Plan	203-00111	941.11
Telefunken Semicon (Phils.) Inc. Emp. Ret. Plan	203-00122	10,948.56
Central Philippine University Emp. Ret. Plan	341-00026	826.04
SGV & Co. Provident Fund	341-00051	375.32
Dizon Copper Silver Mines, Inc.	203-00244	19.42
Medical City General Hospital Ret. Plan	203-00345	60.[illegible]
Manila Golf & Country Club	201-00010	35.2[illegible]
G. D. Searle Phils., Inc. Emp. Ret. Plan	202-00014	304.24
G. D. Searle Phils., Inc. – Fund B	202-00046	225.8[illegible]
Manila Broadcasting Company	203-00083	50.58
Triumph International Phils. Inc. Emp. Ret. Plan	203-00121	95.29
CMG Marketing Services, Inc. Emp. Ret. Plan	203-00347	64.70
Intel Phils. Manufacturing, Inc Ret. Plan	203-00379	4,974.90
SGV & Co. Staff Provident Fund	341-00050	2,016.31

Monsanto Phils., Inc. Provident Fund	341-00073	36.23
DCCD Engineering Corp. Ret. Plan	341-00093	892.60
SGV & Co. Provident – Fund B	341-00115	171.75
	Total:	P 30,009.74

Prescinding from the above, out of the total claim of P2,643,765.64 pertaining to tax-exempt retirement funds, it was established that only the amount of P2,613,755.90 corresponds to tax-exempt retirement funds which are under trust with herein Petitioner.

What is now left to be ascertained is whether or not the retirement funds related to the claim for refund of P2,613,755.90 actually earned interest income from investments made by Petitioner in their behalf from which 20% final taxes were actually withheld and remitted to the BIR.

Several documentary evidence on record such as the Confirmation of Sale, Collection Execution Reports (CER's) and Fixed Income Collection Final Reports (FICFR's) submitted by Petitioner all prove the fact that it made investments on behalf of the tax-exempt retirement funds and that interest income were collected as a result of the said investments. These documents indicated details such as the type of investment made, interest rate (net of 20% final tax), purchase date, maturity date, term, trust account number, savings account number, principal amount and maturity value of the investm[illegible] (Exhs. AA-1 to AA-37-a, BB-1 to BB-14, BB-15 to BB-23-a, BB-24-a [illegible]-31-a, [illegible] to CC-2-a, CC-4 to CC-51-a, DD-1 to DD-30-a, Folder 2 [CER-001 [illegible] 161], [illegible] 3 [FICF-001 to FICF-037], inclusive).

Indeed, as We view it, these CER's, FICFR's and Exhibit VI of the SGV Re[illegible] (Exh. EE-7) show that the amount of P2,613,755.90 represents final taxes withheld in 1997 on interest income earned by the concerned tax-exempt retirement funds from investment in Citibank Promissory Note (Citibank PN), Citibank SP Savings, Citibank T-bills, Floating Rate Treasury Notes (FRTN), Fixed Rate Treasury Notes (FXTN), CPS National Steel (FEBII) and Cash Management Bills/Special T-bills/T-bills broken down as follows:

INVESTMENT	AMOUNT OF CLAIM
CITIBANK PN	P 412,438.47
CTB (CITIBANK) SP SAVINGS	129,072.19
CITIBANK TBILLS	90,844.11
FRTN	11,970.73
FXTN	43,572.94
CPS NAT'L STEEL – FEBII	366.01
TBILLS/CM BILLS/S TBILLS	1,925,491.45
	P2,613,755.90

However, despite these relevant documentary exhibits relative to the above total withholding taxes of P2,613,755.90, Petitioner was able to prove the actual withholding and remittance to the Bureau of Internal Revenue of only the amount of P1,925,491.45 representing final taxes withheld on the interest income of tax-exempt retirement funds from T-bills/Cash Management (CM) Bills/Special Bills based on the Certification issued by BSP to Petitioner for 1997 (Exhs. FF to FF-2-a, inclusive).

In reaching our above conclusion, we are moved by, among other things, the absence of Certificates of Final Taxes Withheld on withholding [illegible] from Citibank Promissory Note (PN), CTB (Citibank) SP SAVINGS, Citibank T-bills, Floating Treasury Notes (FRTN), Fixed Rate Treasury Note (FXTN) and C[illegible]onal [illegible] FEBII, evidencing the actual withholding and remittance to the Bureau of Internal

Revenue of the amount of P688,264.45. Thus, the claim for refund based on these documents must be outrightly denied.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** to Petitioner the amount of P1,925,491.45 representing final taxes withheld on interest income of tax-exempt retirement funds from T-bills/Cash Management (CM) bills/Special bills for taxable year 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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