Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MONETARY AUTHORITY OF SINGAPORE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8973

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 2 3 2017
10:15 a.m.

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DECISION

CASANOVA, *J.:*

Before this Court is a Petition for Review[1], filed by Monetary Authority of Singapore, on January 20, 2015, praying that the Court grant its claim for refund and order respondent Commissioner of Internal Revenue (CIR) to refund the amount of Fifteen Million Six Hundred Sixty-one Thousand Four Hundred Eighty-six and 88/100 (₱15,661,486.88), representing the twenty percent (20%) final withholding tax (FWT) withheld on its interest income earned from petitioner's investments in foreign transactions during the period January 2013 to November 2013.

Petitioner Monetary Authority of Singapore was established under the Monetary Authority of Singapore Act.[2] Its functions, among others, are to act as the central bank of Singapore, conduct monetary policy, issue currency, oversee payment systems, serve as banker to and financial agent of the Government of Singapore, and to manage the official foreign reserves of Singapore.[3] It is registered with the

[1] Docket (Vol. I), pp. 6-14.
[2] Chapter 186
[3] Exhibit "P-5".

Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 39, as a One-Time Taxpayer, in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Taxpayer Identification No. 297-257-659-000.[4]

Respondent Commissioner of Internal Revenue is vested by the National Internal Revenue Code (NIRC) of 1997, as amended with the authority to decide, approve, and grant tax refunds. She may be served with summons and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On various coupon dates from January 2013 to November 2013, petitioner received interest income on the fixed-rate treasury notes (FXTNs) issued by the Bureau of Treasury, which petitioner acquired, net of twenty percent (20%) Final Withholding Tax (FWT) withheld and remitted by the Bureau of Treasury to the BIR[5], the details of which are broken down, as follows:

Date of Credit	Gross Amount of Interest	20% FWT
January 19, 2013	₱ 18,870,029.71	₱ 3,774,005.94
January 19, 2013	892,500.00	178,500.00
January 27, 2013	8,750,000.00	1,750,000.00
February 18, 2013	8,125,000.00	1,625,000.00
July 19, 2013	701,250.00	140,250.00
July 19, 2013	1,013,625.00	202,725.00
July 19, 2013	18,870,029.71	3,774,005.94
July 27, 2013	8,750,000.00	1,750,000.00
August 19, 2013	2,375,000.00	475,000.00
October 24, 2013	735,000.00	147,000.00
October 25, 2013	2,193,750.00	438,750.00
November 8, 2013	4,125,000.00	825,000.00
November 22, 2013	2,906,250.00	581,250.00
TOTAL	**₱78,307,434.42**	**₱15,661,486.88**

On April 16, 2014, petitioner filed with the BIR Revenue District Office (RDO) No. 39, an administrative claim for refund[6] of

[4] Exhibit "P-2".
[5] Exhibit "P-12-1", "P-12-2", "P-12-3", "P-12-4", "P-12-5", "P-14", "P-16", "P-18-1", "P-18-2", "P-22", "P-22".
[6] Exhibit "P-1".

erroneously withheld FWT for the period April 20, 2012 to November 22, 2013, broken down, as follows:

Transaction	Gross Interest on Coupon Date	20% FWT on the Gross Interest
On interest income received during the period 20 April 2012 to 03 September 2012	Php 79,610,526.34	Php 15,922,105.27
On interest income received during the period 19 January 2013 to 22 November 2013	78,307,434.42	15,661,486.88
TOTAL	**Php157,917,960.76**	**Php31,583,592.15**

Thereafter, petitioner filed the instant Petition for Review before this Court on January 20, 2015.

In his Answer[7], filed on March 31, 2015, respondent interposed the following defenses, to wit:

1) that petitioner's alleged claim for tax refund/credit is subject to administrative investigation/examination by the BIR;

2) that petitioner failed to demonstrate that the tax subject of the case was erroneously or illegally collected;

3) that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.;

4) that petitioner must prove compliance with the governing rules relative to tax recovery or refund as provided for under Sections 204 (C) and 229 of the NIRC of 1997, as amended;

5) that in an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

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[7] Docket, pp. 87-88.

6) that it cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference.; and

7) that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

The case was set for Pre-Trial Conference[8] on May 14, 2015. Thus, respondent[9] and petitioner[10] filed their pre-trial briefs on April 24, 2015 and May 11, 2015, respectively.

On July 1, 2015, the parties filed their Joint Stipulation of Facts and Issues (Between Petitioner Monetary Authority of Singapore and Respondent Commissioner of Internal Revenue)[11], which was adopted by the Court in the Pre-Trial Order[12] dated July 7, 2015.

During trial, petitioner presented the following witnesses: (1) Ms. Nicole Kristine M. Monasterio[13] – Vice President of the Client Services Section of the Hongkong Shanghai Banking Corporation (HSBC) Securities Services Department of the HSBC Limited-Philippine Branch; (2) Ms. Karina Fatima F. Del Rosario[14] – Vice President of the Asset Services Section of the Securities Services Department of HSBC Limited-Philippine Branch; (3) Mr. Rudolf Carl G. Morales[15] – Head of Corporate Actions for the Securities and Custody Operations Department of Deutsche Bank AG, Manila Branch; (4) Mr. Norman M. Lapid[16] – Securities Operations Head of the Securities Services Operations Department of Citibank N.A.; (5) Mr. Ker-Yang Wei[17] – Deputy Director in the Foreign Investment Accounting Division of petitioner. It, likewise, formally offered its documentary evidence[18] on December 3, 2015. The Court admitted most of the exhibits therein, except the following: Exhibit "P-10", "P10-1" and "P-10-2".

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[8] Notice of Pre-Trial Conference, Docket (Vol. I), p. 91.
[9] Respondent's Pre-Trial Brief, Docket (Vol. I), pp. 92-95.
[10] Pre-Trial Brief (of Petitioner Monetary Authority of Singapore), Docket (Vol. I), pp. 100-107.
[11] Docket (Vol. I), pp. 230-234.
[12] Docket (Vol. I), pp. 236-242.
[13] Minutes of the Hearing dated August 10, 2015, Docket (Vol. I), p. 264.
[14] *Ibid.*
[15] Minutes of the Hearing dated September 7, 2015, Docket, p. 395.
[16] *Id.*
[17] Minutes of the Hearing dated October 28, 2015, Docket (Vol. II), p. 575.
[18] Formal Offer of Evidence (by Petitioner Monetary Authority of Singapore), Docket (Vol. II), pp. 577-594.

On the other hand, respondent manifested that he is raising legal points only and that he has no witness to present in this case.[19]

In compliance with the Court's resolution dated February 4, 2016, petitioner[20] filed its Memorandum on March 11, 2016, while respondent[21] filed his Memorandum on May 16, 2016

Consequently, the case was declared submitted for decision[22] on June 1, 2016.

The parties submitted the following issues[23] for this Court's disposition:

> "1. Whether or not petitioner is the Central Bank of the Government of Singapore.
>
> 2. Whether or not petitioner actually invested in the interest bearing Fixed-rate Treasury Notes issued by the Philippine Government during the period January 2013 to November 2013.
>
> 3. Whether or not the final withholding taxes on petitioner's interest income from Fixed-rate Treasury Notes were withheld and remitted to the Bureau of Internal Revenue by the Bureau of Treasury.
>
> 4. Whether or not petitioner is entitled to the refund of alleged erroneously withheld final withholding taxes in the amount of Pesos: **Fifteen Million Six Hundred Sixty One Thousand Four Hundred Eighty Six and 88/100 (₱15,661,486.88)**, during the period January 2013 to November 2013."

The foregoing issues boil down to whether or not petitioner is entitled to the refund or issuance of a TCC in the amount of ₱15,661,486.88, representing petitioner's erroneously withheld FWT

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[19] Minutes of the Hearing dated October 28, 2015, Docket (Vol. II), p. 575.
[20] Docket (Vol. II), pp. 753-783.
[21] Docket (Vol. II), pp. 791-795.
[22] Resolution dated June 1, 2016, Docket (Vol. II), p. 796.
[23] II. Stipulation of Issues, Joint Stipulation of Facts and Issues Between Petitioner Monetary Authority of Singapore and Respondent Commissioner of Internal Revenue) (JSIF), Docket (Vol. I), p. 231.

on interest income received during the period January 2013 to November 2013.

Petitioner insists that as the Central Bank of Singapore, any income it received from its investments in the Philippines in loan, stocks, bonds and other domestic securities, or from interest on deposits in the Philippines is exempt from income tax and, consequently, from withholding tax.

Petitioner further claims that its investments in the Philippines are in the form of Republic of the Philippines Government Bonds (RPGBs) and FXTNs being held by primary purchasers or eligible dealers but are ultimately for the benefit of petitioner.

Moreover, petitioner contends that the administrative and judicial claims for refund/TCC were filed within the two (2) year prescriptive period provided under the NIRC of 1997, as amended. It also argues that the erroneously withheld tax should be refunded to it following the principle of *solutio indebiti*.

Meanwhile, respondent argues that petitioner failed to prove that it is a financing institution wholly-owned by the government of Singapore. He further claims that petitioner's alleged investments in FXTNs were done through its custodians and not by petitioner itself, hence, are not exempt from taxation. Finally, he insists that claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

Pertinent to the resolution of the instant case are Sections 204(C), in relation to Section 229 of the NIRC of 1997, as amended, to wit:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his

discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

"**SEC. 229.** ***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.

In any case, no such suit or proceeding shall be filed 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 therefore, 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." *(Emphasis supplied)*

Pursuant to the above-mentioned provisions, to be entitled for a refund or issuance of TCC, a taxpayer must prove the following requisites: (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) that the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

(1) The tax has been erroneously or illegally collected

Petitioner claims that it is the Central Bank of Singapore established under the Monetary Authority of Singapore Act (MAS Act). Being a financial institution wholly owned and controlled by the Government of Singapore, petitioner asserts that any income derived in the Philippines is exempt from income tax and consequently from FWT, in accordance with Section 32(B)(7)(a)(ii) of the NIRC of 1997, as amended, which provides:

> "SEC. 32. *Gross Income.* –
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income.* –The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> (7) *Miscellaneous Items.* –
>
> (a) *Income Derived by Foreign Government.* – Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

To bolster its claim, petitioner submitted a notarized and authenticated Certificates of Residence-For the Purpose of Claiming Benefit Under the Singapore-Philippines DTA for Years 2013 and 2014[24] to prove that petitioner is a resident of Singapore; that it is a Statutory Board and is the Central Bank established by the Government of Singapore; and, that petitioner is exempt from tax in Singapore. Petitioner also presented a notarized and authenticated copy of Monetary Authority of Singapore Act (Chapter 186)[25] proving petitioner's juridical personality and the fact that it is the duly Authorized Central Bank of Singapore.

[24]Exhibit "P-3".
[25]Exhibit "P-5".

As held by the Supreme Court in the case of *Angelita Lopez vs Court of Appeals, et. al.*[26], a document executed in a foreign country cannot be admitted in evidence unless it is certified by a secretary of embassy or legation, consul-general, consul, vice-consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of office.

Verily, the Certificates of Authentication issued by the Philippine Consul in Singapore are sufficient to prove the due execution and genuineness of the documents submitted. Thus, petitioner was able to prove that it is indeed the Central Bank of the Government of Singapore.

Having established that petitioner is a financial institution wholly owned and controlled by the Government of Singapore, it is therefore exempt from payment of income tax and FWT on income derived from its investments in Philippine loans, stocks, bonds or other domestic securities pursuant to Section 32(B)(7)(a) of the NIRC of 1997, as amended.

As a banker and financial agent of the Government of Singapore, petitioner entered into separate Custodian Agreements[27] with State Street Bank and Trust Company (SSBTC) and Northern Trust Company (NTC) for the management and facilitation of its assets and investments in the Philippines.

Petitioner made several investments in the Philippines. It acquired from various primary purchasers/Government Securities Eligible Dealers (GSED) several investments in the form of interest-bearing Fixed-Rate Treasury Notes ("FXTNs") issued by the Philippine government through the Bureau of Treasury (BTr).[28]

The primary purchasers/GSEDs are those who purchased the FXTNs directly from the BTr. For petitioner's investments, these primary purchasers would be the Philippine branches of the following banks (collectively, referred to as "local banks"): City Bank, N.A., The

[26] G.R. No. 77008, December 29, 1987.
[27] Exhibits "P-7" (with SSBTC) & "P-8" (with NTC), docket, vol. I, pp. 174-184 & 186-209.
[28] Par. 8, Memorandum (of Petitioner Monetary Authority of Singapore), Docket (Vol. II), p. 755.

Hong Kong and Shanghai Banking Corporation, Limited (HSBC), and Deutsche Bank.[29]

However, the purchase of TXTNs were done by petitioner through its custodians, SSBTC, and its depository Euroclear Bank S.A./N.V. (Euroclear); and NTC, and its sub-custodian, Euroclear.[30]

In support of the foregoing, petitioner submitted various Consularized Certifications[31] and swift message[32] issued by its custodians and/or sub-custodians; Interest Payment Advices[33]; and Certifications[34] issued by the GSEDs. A perusal of said documents reveal that petitioner made several investments in the form of FXTNs and earned interest income therefrom in the amount of ₱78,307,434.42, with the corresponding FWT of ₱15,661,486.88, the details of which are as follows:

Exhibit No.	ISIN	Local ISIN	Payment Date	Gross Amount of Interest	20% FWT
P-11, P-15	PHY6972FRC68	PIBD1022G545	19-Jan-13	₱ 18,870,029.71	₱ 3,774,005.94
P-17, P-19	PHY6972FRC68	PIBD1022G545	19-Jan-13	892,500.00	178,500.00
P-11, P-15	PHY6972FHQ64	PIBD0716A488	27-Jan-13	8,750,000.00	1,750,000.00
P-11, P-12-1, P-13	PHY6972FQB94	PIBD0718H511	18-Feb-13	8,125,000.00	1,625,000.00
P-20, P-21	PHY6972FRC68	PIBD1022G545	19-Jul-13	701,250.00	140,250.00
P-17, P-19	PHY6972FRC68	PIBD1022G545	19-Jul-13	1,013,625.00	202,725.00
P-11, P-15	PHY6972FRC68	PIBD1022G545	19-Jul-13	18,870,029.71	3,774,005.94
P-11, P-15	PHY6972FHQ64	PIBD0716A488	27-Jul-13	8,750,000.00	1,750,000.00
P-11, P-12-2	PHY6972FQB94	PIBD0718H511	18-Aug-13	2,375,000.00	475,000.00
P-11, P-12-3, P-13	PHY6972FRD42	PIID2537J015	24-Oct-13	735,000.00	147,000.00
P-11, P-15	PHY6972FTZ36	PIBD0316D206	25-Oct-13	2,193,750.00	438,750.00
P-11, P-12-4, P-13	PHY6972FTN06	PIBD0517K719	08-Nov-13	4,125,000.00	825,000.00
P-11, P-12-5, P-13	PHY6972FSZ45	PIBD0719K560	22-Nov-13	2,906,250.00	581,250.00
	Total			**₱78,307,434.42**	**₱15,661,486.88**

To prove that petitioner erroneously paid the 20% FWT on its interest income from investments in government securities in the Philippines, the following documentary evidences were presented:

[29] Par. 9, *Ibid.*
[30] Par. 10, *Id.*
[31]Exhibit "P-9"; Exhibits "P-11", "P-12", "P-17", "P-18" & "P-20".
[32]Exhibit "P-23".
[33]Exhibits "P-12-1" to "P-12-5" & "P-18-1" to "P-18-2".
[34]Exhibits "P-13", "P-15", "P-19", "P-21", "P-31".

1. BTr's Letter dated October 24, 2014, covering the Certificate of Final Tax Withheld (BIR Form No. 2306) issued by BTr to Citibank, Statement of Taxes Withheld on coupon payments to Citibank's custodian account from January 1 to December 31, 2013 and Journal Vouchers of remittances made by the BTr. [35]

2. BTr's Letter dated January 23, 2015 covering the BIR Form No. 2306 for Final Taxes withheld issued by BTr to DB Manila, Statement of Taxes Withheld on coupon payments to DB Manila's Custodian Account from January 1 to December 31, 2013 and Journal Vouchers of remittances made by the BTr. [36]

3. BTr's Letter dated January 14, 2015 covering the BIR Form No. 2306 for Final Taxes Withheld from HSBC-Custody Account by the BTr and Statement of Taxes Withheld on coupon payments to HSBC Manila's Custody Account from July 1 to July 31, 2013.[37]

In the Judicial Affidavits[38] of Ms. Karina Fatima F. Del Rosario, Mr. Rudolf Carl G. Morales, and Mr. Norman Lapid, officers of HSBC, DB Manila and Citibank ("the banks"), respectively, they attested that the banks provide custody and settlement services to clients for their investments or holdings of securities that are generally issued in the Philippines. As sub-custodian, the banks settle trade transactions of clients in the local market at the relevant depositories/registries, such as the Registry of Scripless Securities (RoSS) of the BTr. The banks hold these assets in its omnibus accounts with RoSS in favor of its various clients, which includes the NTC (Hongkong & Shanghai Banking Corp-Custody Account) for HSBC, SSBTC (Deutsche Bank AG Manila Custody) for DB Manila and Euroclear (Citibank N.A. As Custodian) for Citibank. The income payments from the coupon dates for the investments in government securities are received by the banks in bulk from the depository/registry and are later on credited to the accounts of the clients. Hence, the BTr, which is the withholding agent for the FWT due on the interest income derived by petitioner from the government securities, considers the banks as payees of the interest due on such securities, as can be gleaned from the BIR Forms No. 2306[39].

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[35]Exhibits "P-14" to "P-14-3".
[36]Exhibits "P-16" to "P-16-3".
[37]Exhibits "P-22" to "P-22-2".
[38]Exhibits "P-33", "P-34" and "P-35".
[39]Exhibits "P-14", "P-16" & "P-22".

The Letters[40] issued by BTr with the Statement of Taxes Withheld[41] shows the amounts of FWT withheld on the interest due on the government securities recorded under the banks' custody accounts, which were later on remitted by the BTr to the BIR, as summarized below:

The banks	Period	Final Taxes Withheld
Citibank	January 1, 2013 to December 31, 2013	₱ 643,312,495.66
DB Manila	January 1, 2013 to December 31, 2013	1,244,096,473.66
HSBC	July 1, 2013 to July 31, 2013	56,831,567.55
Total		**₱ 1,944,240,536.87**

The aforementioned final taxes withheld and remitted by the BTr to the BIR correspond to all the holdings of various clients under the banks' custody accounts, which includes petitioner's holdings through NTC, SSBTC and Euroclear. The Statement of Taxes Withheld shows that the International Security Identification Numbers (ISINs) of petitioner's investments in government securities in the Philippines under the custody accounts of Citibank, DB Manila and HSBC were included, hence, the FWT on petitioner's income derived therefrom were included in the amounts withheld and remitted to the BIR.

In sum, the FWT on its interest income earned from the investment in government securities in the Philippines were erroneously collected, petitioner being exempt from payment of income tax and, consequently, from FWT pursuant to Section 32(B)(7)(a)(ii) of the NIRC of 1997, as amended.

(2) The claim for refund was filed within two years from date of payment of tax

Records show that the first coupon payment was made on January 21, 2013[42] which was the same date on which, the 20% FWT was withheld and remitted by the BTr. Counting two years from January 21, 2013, petitioner had until January 21, 2015, within which to file its claim for refund/TCC both administratively and judicially. Clearly, petitioner's administrative claim filed on April 16, 2014 and

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[40]Exhibits "P-14-1", "P-16-1" & "P-22-1".
[41]Exhibits "P-14-2", "P-16-2" & "P-22-2".
[42]Exhibit "P-15".

judicial claim filed on January 20, 2015 were within the two-year period prescribed by law.

Therefore, petitioner has sufficiently proven its entitlement to a refund/issuance of TCC of its erroneously withheld FWT in the amount of ₱15,661,486.88.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a TCC in favor of petitioner in the amount of ₱15,661,486.88 representing 20% FWT on the interest income derived from petitioner's investment in Philippine government securities for the period January 2013 to November 2013.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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.

ROMAN G. DEL ROSARIO
Presiding Justice