LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE S. MIRANDA, et al.,
and other PNB Retirees
similarly situated,
Petitioners,

- versus -

C.T.A. CASE NO. 5035

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 15 1997

x - x

DECISION

This petition refers to a claim for refund in the total amount of P231,913.49 as taxes withheld on the terminal leave pay and the monetary value of accumulated vacation and sick leaves of the following Philippine National Bank (PNB) retirees during the period 1987 to 1989, namely:

	Amount Withheld
Jose S. Miranda	₱ 29,791.69
Ernesto L. Abellera	926.16
Jovito Avanceña	19,956.99
Simeon C. Cuison	13,469.61
Restituto P. Dayon	9,728.34
Lazaro M. Dimaculangan	9,055.03
Domingo B. Ferrer	33,543.06
Abelardo M. Dizon	817.02
Virginia B. Flores	1,195.02
Cesar V. De Guzman	9,765.09
Victorino E. De Gracia	17,521.61
Bienvenido M. Magsino	7,758.41
Shirley C. Palad	6,323.25
Leonor A. Purugganan	1,184.60
Dulca B. Roxas	17,150.16
Celestino A. Sogono	11,432.32
Florencio Sy-Changco	9,120.91
Juan T. De Vera, Jr.	3,121.14
Fe T. Yoingco	30,053.08
T O T A L	₱231,913.49

In the case of **Florencio E. Santos vs. Commissioner of Internal Revenue, CTA Case No. 4004, promulgated on November 18, 1987,** this Court ruled that petitioner, Mr. Santos, is entitled to the refund of the amount of P34,113.84, representing income tax withheld from his terminal leave pay of P235,155.38. On appeal to the Supreme Court by the Commissioner of Internal Revenue, the High Court in its Resolution, dated July 4, 1988, denied the petition for failure of petitioner to sufficiently show that the respondent Court had committed any reversible error in its questioned decision **(Commissioner of Internal Revenue vs. Court of Tax Appeals, et al., G.R No. 81363).** In effect, therefore, the Supreme Court concurred with this Court's finding or ruling that the terminal leave pay of Mr. Santos is exempt from income or withholding tax.

On account of the above-mentioned Supreme Court resolution, the petitioners in this case through their PNB Vice-President, Lina A. Layson, sent the Commissioner of Internal Revenue a letter, dated October 29, 1988 (Exhs. "A" and "A-1", Pets.; p. 165, CTA rec.), and received by the latter on November 8, 1988, requesting authority: (1) for PNB to refund directly to the retirees the taxes withheld from the money value of their leave credits; and (2) to deduct the total amount to be paid to the retirees from future tax payments to be made by PNB to the BIR.

In a letter, dated December 5, 1988 (Exhs. "B" to "B-3", inclusive, Pets.; pp. 166-167, CTA rec.), Commissioner Bienvenido Tan, Jr. informed Ms. Layson that the above-mentioned resolution of the Supreme Court is only a minute resolution and not a decision on the merits. He advised PNB to await the decision on the merits in the cases of Efren Castañeda (G.R. No. 96016) and Oscar Victoriano, et. al. (G.R. No. 83176), which are then pending in the Supreme Court, and which cases involve similar legal issue. In the last portion of his letter, Commissioner Tan requested PNB to maintain the status quo and to continue deducting and withholding the corresponding income tax on the accumulated vacation and sick leave credits of retiring PNB officials and employees.

On August 10, 1989, the Supreme Court, in an En Banc Resolution in G.R. No. 83176, ruled that since the terminal leave pay of the former Presiding Justice of the Court of Appeals, Oscar R. Victoriano, is part of his salary, the same is subject to withholding tax.

On October 17, 1991, the Supreme Court in its Resolution in the case of Efren Castañeda (G.R. No. 96016) was promulgated, holding that terminal leave pay is not part of the income of a government official or employee but a retirement benefit. Unlike Victoriano whose claim for refund was denied, Efren Castañeda's claim for refund of withholding tax on his terminal leave was granted by the Supreme Court.

Consequently, as the Castañeda resolution favored the PNB retirees' claim for refund, their Chairman, Mr. Jose Miranda, sent the BIR a letter, dated February 3, 1992 (Exh. "C", Pets.; p. 168, CTA rec.), to follow up their refund claim. This was followed by another letter, dated April 20, 1992 (Exh. "D", Pets.; p. 170, CTA rec.), reiterating their request for refund.

On November 23, 1992, another follow-up letter was sent to the BIR relative to the PNB retirees' claim by petitioners' counsel, Atty. Corazon D. Soluren (Exh. "E", Pets.; pp. 1701-171, CTA rec.). Said letter was received by the BIR on November 26, 1992.

Notwithstanding said letters, the refund claim of the PNB retirees remained unacted upon by the BIR. Hence, on October 16, 1993, the PNB retirees filed the instant petition with this Court.

On November 17, 1993, instead of filing an Answer, respondent, through registered mail, filed a Motion To Dismiss (pp. 33-36, CTA rec.) on the ground that this Court has no jurisdiction on the ground of prescription.

According to respondent, although the petition did not indicate as to when the amounts being claimed were withheld, it can be presumed that since the petitioners retired during the years 1987 to 1989, the withholding was done during the same years. As the petition was filed only on October 16, 1993, clearly it was filed more than two years from 1987 to 1989.

Petitioners filed also through registered mail on December 3, 1993, an Opposition To Dismiss (pp. 40-41, CTA rec.), alleging that they made a request for refund within the two-year prescriptive period. However, due to Commissioner Tan's statement that petitioners should await for the Supreme Court's decision on the merits in the cases of Castañeda and Victoriano, petitioners did not insist on their request for refund.

On March 9, 1994, this Court, acting on respondent's Motion To Dismiss and petitioners' Opposition thereto, dismissed the instant petition for being filed beyond the two-year period prescribed by law without prejudice to the granting of said claim in the administrative level (see pp. 49-60, CTA rec.).

On April 7, 1994, petitioners filed a Motion for Reconsideration (pp. 62-69, CTA rec.) wherein they maintained that the two-year prescriptive period for refund may be interrupted in the following instances:

(1) When there is a judicial demand or a suit in Court; (2) estoppel on the part of the Commissioner of Internal Revenue; and (3) on moral and equitable grounds that no one may enrich himself at the expense of another.

Petitioners alleged that the doctrine of estoppel applies to the Commissioner of Internal Revenue, when the latter wrote them that they should await for the decisions of the Supreme Court in the Castañeda and Victoriano cases before pursuing their refund claim. Hence, if they waited for such decisions and more than two (2) years have already elapsed from the dates of payment of their withholding taxes, the Commissioner of Internal Revenue should be considered estopped from raising the defense of prescription. Their submission to the decision of the Commissioner to wait for the outcome of the two aforementioned cases should not be taken against them, as such it would be unfair, unjust and inequitable. Thus, in the **Administrative Matter No. 90-6-015-SC.**, October 18, 1990, Re: Request of Atty. **Bernardo Zialcita for Reconsideration of the Action of the Financial and Budget Office**, the Supreme Court ruled that:

> "With respect to the need for a written request for refund, we rule that Atty. Zialcita need no longer file a formal request for refund since the August 23, 1990 Resolution, which principally deals with his case, already binds

> the intervenor-movant Commissioner of Internal Revenue. However, with respect to other retirees allegedly similarly situated and from whom withholding taxes on terminal leave pay have been deducted, we rule that these retirees should file a written request for refund within two years from the date of promulgation of this resolution. Fiscal considerations do not allow that this matter be left hanging for an indefinite period while retirees make up their minds as to whether or not they are entitled to refunds."

Citing the above Supreme Court ruling in the case of Atty. Bernardo Zialcita, petitioners quoted that retirees are most deserving of compassion and should not be given a strained interpretation of the law. Moreover, in the case of **In Re: Application for Life Pension Under Rep. Act 910. Ruperto G. Martin, applicant, A.M. 747-RET, July 13, 1990 (187 SCRA 477)**, the Supreme Court, likewise, ruled that "retirement law aims to assist retiree in his old age, not to punish him for having survived".

Respondent argued that even if petitioners were advised to await the Supreme Court's decision in the Castañeda and Victoriano cases, such representation should not be interpreted to mean that petitioners are given the right or authority to file the present action beyond the two-year period from the date the taxes were erroneously paid. Said two-year period cannot be waived by the Commissioner.

In a resolution, rendered on June 16, 1994 (pp. 75-79, CTA rec.), this Court reconsidered its previous resolution of March 9, 1994, by stating that the two-year period under Section 230 is not a hard and fast rule as it clearly appeared in the case of Atty. Zialcita (supra). In that case, the retirees of the Judiciary were given two years from the date of the resolution, and not from the date of payment, within which to file a refund of the withholding taxes that were imposed on their terminal leave pay. On grounds of equity, this Court hereby applies the Zialcita ruling to the instant case. Similarly, through the act of the respondent, the instant case was belatedly filed. Having reconsidered its previous resolution on the dismissal of this case, this Court ordered petitioners to file their answer.

On November 4, 1994, through registered mail, respondent filed her answer which was received by this Court on November 9, 1994. The special and affirmative defenses raised were the following:

> 1. The claim for refund of petitioners has prescribed;
>
> 2. The claim filed is not in accordance with Section 230 of the Tax Code, as amended;
>
> 3. Commissioner Tan's letter is a mere opinion on a query posed by the Philippine National Bank, and it cannot be considered as a waiver of the statute of limitations;

4. The case of Panay Electric Co. vs. Collector of Internal Revenue, 103 Phil 819, is inapplicable to the present case as there was no claim for refund filed by the herein petitioners;

5. Taxpayer/claimant has the burden of proof to establish his right to the refund; and

6. Tax refund is in the form of an exemption which must be strictly construed against the taxpayer.

On December 12, 1994, petitioners' counsel started proving their case by presenting Mr. Jose Miranda, as witness, who testified on their written claim for refund filed with the BIR. He also identified the refund letter (Exh. "A", Pets.; p. 165, CTA rec.) and other documents, consisting of the Certifications issued by PNB as to the amounts withheld and remitted to the BIR, among others, (Exhs. "F" to "F-8", Pets.; pp. 176-184, CTA rec.).

The succeeding hearings that were scheduled by the Court were repeatedly postponed either on account of conflict in schedule of hearings of petitioners' counsel or due simply to his non-appearance in Court. Thus, on March 16, 1995 when she failed to appear before the Court, respondent's counsel orally moved that the case be dismissed. However, in view of the fact that petitioner's counsel has already started presenting her evidence, the Court merely declared that she be deemed to have waived the presentation of further evidence. This order in open Court was confirmed in a Resolution, promulgated on March 24, 1995 (see p. 133, CTA rec.).

On April 24, 1995, through registered mail, petitioners filed a Motion for Reconsideration of the above-mentioned Resolution. This motion which was received by this Court on May 3, 1995, was denied for the reason that it is not verified and not accompanied by an affidavit of merit (see Resolution, May 18, 1995, p. 144, CTA rec.).

Undaunted by the Court's denial of their first motion for reconsideration, petitioners filed on July 8, 1995 a Second Motion for Reconsideration (pp. 148-152, CTA rec.). This time they alleged that pursuant to Sections 1, 2 and 3 of Rule 15 of the Rules of Court, all that is required for motions, which include motion for reconsideration, is that they must be in writing and must state the order sought to be obtained and the grounds upon which it is based, and if necessary, shall be accompanied by supporting affidavits and other papers. In other words, they need not be verified and they may or may not be accompanied by an affidavit of merit.

In the interest of substantial justice and considering that a witness for the petitioner has already testified and has been cross-examined by respondent's counsel, and that some documents have already been marked and presented on December 12, 1994, this Court in a Resolution, dated August 11, 1995, resolved to reconsider and set aside its Resolutions of March 24, 1995 and May 18, 1995.

Consequently, on September 15, 1995, petitioner's counsel presented another witness in the person of Mr. Pedrito Nuque, Assistant Manager of the Personnel Department of PNB. Just like the first witness, Mr. Nuque also testified on their alleged letter of refund dated October 29, 1988 (Exh. "A", supra).

On October 3, 1995, petitioners' counsel submitted her Formal Offer of Evidence. Respondent's counsel failed to file her comment thereon and so, this Court resolved to admit all of the exhibits, testimonial and documentary, subject to its evaluation of their purposes, materiality and probative value.

On the part of respondent, no evidence whatsoever was submitted to the Court. Her counsel merely submitted her case based on the pleadings and records of the case.

As borne by the records, no memorandum was submitted by both parties.

The issues at stake are the following:

1. Whether or not the letter of October 29, 1988 can be considered as a valid claim for refund filed with the BIR, and

2. Whether or not petitioners are entitled to the refund of their terminal leave pay.

Anent the first issue, petitioners claim that PNB's letter of October 29, 1988 is their written claim for refund filed with the BIR. On the other hand, respondent argues in her Answer that this letter is a mere query addressed to the BIR asking authority for PNB to refund directly to the retirees the withholding tax imposed on their terminal leave pay. Such letter, according to respondent, is not in accordance with Section 230 of the Tax Code, as amended.

A perusal of said letter, dated October 29, 1988 (Exh. "A", supra), would show that it is a request for an authority to refund erroneously withheld taxes from its retirees, thus:

> October 29, 1988
>
> The Commissioner
> Bureau of Internal Revenue
> Quezon City
>
> Attention: Mr. RICARDO ANARNA
> Chief, Withholding Tax Division
>
> S i r:
>
> This refers to the Supreme Court decision in the case of the Commissioner of internal Revenue vs. Court of Tax Appeals, et al. (GR. No. 81363) which in effect upheld the decision of the Court of Tax Appeals that the money value of unused leave credits of retirees are not subject to income tax.
>
> To assist our retirees in the immediate refund of the taxes withheld from the money

> value of their leave credits, we respectfully request authority (i) for PNB to refund directly to the retirees said withholding taxes; and (ii) to deduct the total amount to be paid to the retiree from future tax payments to be made by PNB to the BIR.
>
> PNB's handling of the refund will not pose any problem since our records of the withholding tax remittances corresponding to the money value of leave credits are still intact. This will also relieve the BIR of the tedious administrative work of effecting the refunds to our retirees.
>
> We trust that these requests will merit your kind approval.
>
> Very truly yours,
>
> (SGD.)
> LINA A. LAYSON
> Vice President

This letter was followed up by three more letters, dated February 3, 1992, April 20, 1992 and November 23, 1992. In all these letters, petitioners reiterated their request for refund of erroneously withheld taxes. In all these letters including the first, dated October 29, 1988, petitioners sought for the refund of the taxes withheld from their terminal leave pays and monetary value of their vacation and sick leaves. Thus, we believe that the letter, dated October 29, 1988, is the letter validly claiming for the refund filed for the petitioners.

On the second issue of whether or not petitioners are entitled to the refund sought, the Court, after careful scrutiny of the evidence presented by petitioners, considers the following petitioners to be entitled to the refund, to wit:

	Amount Withheld	Exhibits
Jose S. Miranda	₱ 29,791.69	"F-4"
Jovito Avanceña	19,956.99	"F"
Simeon C. Cuison	13,469.61	"F-6"
Domingo B. Ferrer	33,543.06	"F-7"
Virginia B. Flores	1,195.02	"F-8"
Cesar V. De Guzman	9,765.09	"F-5"
Shirley C. Palad	6,323.25	"F-3"
Dulca B. Roxas	17,150.16	"F-2"
Florencio Sy-Changco	9,120.91	"F-1"
T O T A L	₱140,315.78	

The rest of the petitioners claim not enumerated above cannot be granted for lack of material evidence to prove that they have been withheld.

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED.** Respondent is hereby ordered to **REFUND** in favor of the following petitioners the following amounts:

	Amounts To Be Refunded
Jose S. Miranda	₱ 29,791.69
Jovito Avanceña	19,956.99
Simeon C. Cuison	13,469.61
Domingo B. Ferrer	33,543.06
Virginia B. Flores	1,195.02

Shirley C. Palad	6,323.25
Dulca B. Roxas	17,150.16
Florencio Sy-Changco	9,120.91
T O T A L	₱140,315.78

representing erroneously withheld and remitted taxes on terminal leaves and monetary value of vacation and sick leaves of the above-mentioned retired PNB employees and officials for the years 1987 and 1988.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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