REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PDCP BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5648

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 16 1999

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DECISION

This is a judicial claim for the refund of P132,721.44 allegedly representing 15% withholding tax on cash dividends which were erroneously withheld by the Petitioner in 1997.

Petitioner is a domestic banking institution organized and existing under the laws of the Philippines with principal office at PDCP Bank Building, 8737 Paseo de Roxas, Makati City, Metro Manila.

The facts are simple.

On March 19, 1997, the Board of Directors of Petitioner declared a cash dividend to all stockholders of record holding convertible preferred shares, one of which is *DEG-Deutsche Investitions und Entwicklungsgesellschaft mbH* or DEG-German Investment and Development Company, heretofore called "DEG", a non-resident German financing institution alleged to be totally owned and controlled by the Government of the Federal Republic of Germany.

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Based on DEG's entitlement to a gross dividend of P884,809.57, Securities Transfer Services, Inc., the stock transfer and dividend disbursing agent of Petitioner, withheld and remitted to Respondent's Bureau on September 10, 1997 the amount of P132,721.44 representing 15% tax applicable to dividends received by a non-resident foreign corporation from a domestic corporation.

On April 30, 1998, Petitioner filed an application for refund of the aforesaid amount of tax withheld before Respondent's Bureau contending that pursuant to Section 28 (b) (8) (A) of the Tax Code, as amended, and BIR Ruling dated January 13, 1976, addressed to the Embassy of the Federal Republic of Germany, the dividend received by DEG was exempt from the payment of income tax and consequently withholding tax, the latter being a financial institution totally owned and controlled by the Government of the Federal Republic of Germany.

Respondent, however, allegedly failed to act upon such application despite the near expiry of the two-year prescriptive period for the filing of a judicial claim for refund. In order to preserve its claim, Petitioner instituted the instant Petition for Review on June 26, 1998.

At bar, Petitioner reasserts its stance _a quo_. On the other hand, Respondent interposed, inter alia, the special and affirmative defense that DEG, allegedly being a German financial institution owned and controlled by the Government of the Federal Republic of Germany, was not supported by proper documentation. In his memorandum, Respondent further pointed out that the BIR Ruling cited by the Petitioner refers to a different company, namely, *Deutche Gesellschaft Fuer wir'schaftliche*

Zuscrumnonderbeit and not DEG-*Deutsche Investitions und Entenicklungsgesellscraft mbH* or DEG-German Investment and Development Company.

Based on the preceding facts and circumstances, this Court is confronted with the following issues:

> 1. Whether or not DEG in the present case is the same corporation named in BIR ruling, dated January 13, 1976; and if in the affirmative;
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> 2. Whether or not by the provisions of Section 28(b) (8) (A) and the documentary evidence submitted at bar supporting the withholding and remittance of P132,721.44, Petitioner is entitled to its claim for refund.

We rule in the negative.

As regards the first issue, it is crystal clear from the BIR Ruling in question that the entity entitled to tax exemption is *Deutche Gesellschaft fuer wir'schaftliche Zuscrumnonderbeit* or German Development Company. In the case at bar, the company alleged to be entitled to said ruling is named DEG- Deutsche Investitions und Entwicklungsgesellschaft mbH or DEG- German Investment and Development Company. Based on the spelling alone of their corporate names, it is unmistakably apparent that the two companies are not one and the same entity referred to in said ruling.

Petitioner should have presented proof, for instance, the amended articles of incorporation which would show that DEG is the same as German Development Company. Its failure to do so makes the above-mentioned ruling inapplicable to the case at bar. For all we know, DEG could be a totally different company or if ever related to the original company named in the ruling, it may not have the same tax-exempt status.

As to the applicability of the cited Section 28(b) (8) (A) of the 1997 Tax Code to the status of DEG-German Investment and Development Company, we also rule in the negative.

Section 28 (b) (8) (A) of the 1997 Tax Code provides as follows:

> (A) Income received from their investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on their deposits in banks in the Philippines by (I) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from them, and (iii) international or regional financing institutions established by governments.

Without the aforesaid BIR Ruling as support, we cannot merely speculate and assume that DEG-German and Investment and Development Company is indeed a non-resident financing institution totally owned and controlled by the Government of the Federal Republic of Germany because Petitioner did not present proof to this effect. Furthermore, Petitioner failed to show by convincing evidence that DEG falls under the provisions of the aforequoted Section 28(b) (8) (A) of the Tax Code to merit tax-exempt status.

It is well settled that tax exemptions are construed strictly against the taxpayer and in favor of the public because exemptions are never presumed. Tax exemptions cannot be created by implication because exemptions from taxation are highly disfavored in law and one who claims exemption from tax must be able to justify his claim by clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist on vague implication (**Collector vs. Manila Jockey Club, Inc. L-875, March 23, 1956; Petroleum Co. vs. Llanes, 49 Phil. 466)** The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so

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claimed. (**Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation, et. al., G.R. 54908; Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation, G.R. No. 80041 January 22, 1990)**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for lack of merit

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 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