CHINA BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3222

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

11/12/90

D E C I S I O N

This is a claim for the refund and tax credit of the amounts of P80,745.00 and P45,714.00 as alleged erroneously paid 5% corporate development tax on the income derived by the petitioenr from its Foreign Currency Deposit Unit (FCDU) for 1978 and 1979, respectively.

Petitioner is a corporation duly licensed to engage in general banking by the Central Bank of the Philippines. It also operates a Foreign Currency Deposit Unit (FCDU) for the purpose of accepting foreign currency deposits.

On April 16, 1979 and April 15, 1980, petitioner paid, pursuant to Section 24(e) of the 1977 Tax Code, as implemented by Revenue Regulations No. 11-77 dated October 6, 1977, the amounts of P80,754.00 and P45,714.00 as 5%

corporate development tax for 1978 and 1979, respectively, or a total of P126,468.00 on its income from (foreign currency) deposits. *(Exhs. A to G)*

Believing that the payment of the 5% corporate development tax on its income from marginal deposits was erroneous, petitioner filed a claim for the refund and/or tax credit of the total amount of P126,468.00 as indicated in its letter to the respondent Commissioner of Internal Revenue dated February 12, 1981. *(Exh. G)*

However, apprehensive of the two-year reglementary period on the filing of the judicial action for the refund and/or tax credit of the amount of tax alleged to have been erroneously paid, petitioner instituted the instant petition for review on April 10, 1981.

In the Special and Affirmative Defenses in his Answer, respondent Commissioner of Internal Revenue stated that:

6. Only subsidiaries of foreign corporations doing business in the Philippines are exempt from payment of the coporate development tax (BIR Ruling 55-81 dated March 23, 1981);

7. Nothing in the provisions of Section 24(e) of the Tax Code or in its implementing

revenue regulations (Revenue Regulations No. 11-77) states that income from marginal deposits (Foreign Currency Deposits) is excepted from the imposition of the 5% corporate development tax (now 10%);

8. Taxes are presumed to have been collected and paid in accordance with law;

9. In claims for refund or tax credit the burden is upon the taxpayer to prove that it is legally entitled thereto; otherwise, failure to substantiate the same is fatal to the action;

10. A claim for refund is construed strictly against the claimant as such claim is in the nature of an exemption from taxation *(Manila Electric Co. vs. Commissioner of Internal Revenue, G.R. No. L-29987, October 22, 1975, 67 SCRA 351)*.

The only issue to be determined in this case is whether or not petitioner is entitled to the claim for refund or tax credit in the total amount of P126,468.00 as 5% corporate development tax paid for the years 1978 and 1979.

Petitioner contends that it is entitled to the tax refund or tax credit of the sum of P126,468.00, there being erroneous payment on account of misinterpretation that Foreign Currency Deposit Unit's income is subject to the 5% corporate development tax under Revenue Regulation No. 11-77.

Respondent Commissioner, through counsel, however contends that nowhere in the provisions of Section 24(e) of the Tax Code, nor in Revenue Regulations No. 11-77 dated October 6, 1977 complimenting the same, can we find that interest income from marginal deposits of Foreign Currency Deposit Units are exempted from the imposition of 5% corporate development tax. Neither was petitioner able to prove that any of the conditions prescribed under Section 24(e) of the Tax Code, as implemented by Revenue Regulations Nos. 11-77, relative to its rate of return on net worth or net assets (net worth ratio) and stock ownership and/or control existed.

We agree with respondent Commissioner of Internal Revenue that petitioenr's evidence is wanting or that it had not been able to prove the fact that its net worth or net assets do not exceed 10% of its net worth, or is not a closely-held corporation, which is one at least 50% in value of the outstanding stock or 50% of the combined voting power of all classes of stock entitled to vote at any time during the taxable years, is owned directly by or for not more than five persons, natural or juridical.

Taxes are presumed to have been collected and paid in accordance with law. In claims for refund or tax credit, the burden always is placed on the taxpayer to prove that it is legally entitled thereto. Otherwise, failure to do so becomes fatal to the action. A claim for refund is construed strictly against the claimant as such claim is in the very nature of an exemption from taxation. *(Manila Electric Co. vs. Commissioner of Internal Revenue, G.R. No. L-29987, Oct. 22, 1975, 67 SCRA 351)* And it is a cardinal rule in taxation that exemption from payment thereof are highly disfavored by law, and the party claiming exemption must justify his claim by a clear, positive or express grant of such privilege of law. *(Collector vs. Manila Jockey Club, G.R. No. L-8755, March 23, 1956, 98 Phil. 670)* And the law does not look with favor on tax exemption and that he who seeks to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. *(Commissioner of Internal Revenue vs. P.J. Kiener Co., Ltd., G.R. No. L-24754, July 18, 1975, 65 SCRA 142)*

WHEREFORE, petitioner's claim for refund and/or tax credit in the amount of P126,468.00 is hereby denied.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 12, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals