lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIGUEL J. OSSORIO PENSION FOUNDATION, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5737

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 24 2000

x - x

DECISION

This is a petition seeking for the refund of allegedly erroneously withheld creditable tax in the amount of P3,037,500.00 arising from the sale of real property upon which Petitioner claims to be a part owner.

The facts as stated in the Petition are as follows:

Petitioner is a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Philippines. It was organized and is existing primarily "to hold legal title to, control, invest and administer, in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, the private pension plan as established for certain employees of Victorias Milling Company, Inc., and other pension plans of Victorias Milling Company affiliates and/or subsidiaries, the pension funds and assets, as well as accruals, additions and increments thereto, and such amounts as may be set aside or accumulated for the benefit of the participants of said pension plans, and in furtherance of the foregoing and as may be incidental thereto." (p. 183, CTA records)

On March 25, 1992, Petitioner decided to invest part of the retirement or trust funds and to buy through Victorias Milling Co., Inc. (VMC, for brevity), one- half of a lot located in Alabang, Muntinlupa, Metro Manila, known as Madrigal Business Park Lot (Exh. A). Petitioner's investment in the said lot came about upon invitation of VMC, which purchased two (2) lots therein, pursuant to VMC's Board Resolution No. 92-44 (Exh. B).

Subsequently, Petitioner's Board of Trustees adopted Resolution No. 96-46 dated July 24, 1996 (Exh. D), authorizing the sale of its share in the Madrigal Business Park Lot for the reason that Petitioner needed funds to pay retirement and pension benefits of VMC employees as well as to pay VMC of advances paid to retirees.

On March 14, 1997, with the consent of its co-owners in the subject lot, namely, herein Petitioner and Victorias Insurance Factors Corporation (VIFC), VMC negotiated for the sale of the said lot to Metropolitan Bank and Trust Co.. On March 26, 1997, the Madrigal Business Park Lot was finally sold to the said bank with VMC signing alone, since Transfer Certificate of Title No. 183907 covering the lot was in the name of VMC, for a total consideration of P81,675,000.00 (Exh. F). On the same day, Metropolitan Bank and Trust Co., as withholding agent, paid the Bureau of Internal Revenue the amount of P6,125,625.00, representing 7.5% withholding tax (Exhs. G, G-1).

On March 19, 1997, the parties which co-owned the lot covered by TCT No. 183907 executed a Memorandum of Agreement as to their respective shares on the proceeds of the sale. Mr. Orlando Fuentes, treasurer of Petitioner, reported the Memorandum of Agreement and circulated copies of the Memorandum to Petitioner's Board of Trustees during its April 23, 1997 meeting (Exh. J), the minutes of which read in part:

> "4. Mr. Orlando Fuentes informed the Board that the Alabang property had been sold for P81,675,000 in favor of Metro Bank, and that MJOPFI's shares as co-owner is 49.59% thereof or P40,502,632.00, gross of 7.5% withholding tax and 3% broker's commission. Of such amount, P21,425,141.54 had been paid to VMC for its advances to pay pension benefits, and P10 million had been remitted to MJOPFI's account with BPI Asset Management & Trust Group, leaving a balance of about 4 million still with VMC. Mr. Fuentes stated that he wrote a letter to Mr. Manuel Manalac, Chairman of VMC Finance Committee, requesting that the balance be remitted to MJOPFI's account with BPI.
>
> "Mr. Orlando Fuentes also said that since the property was registered in the name of VMC, 7.5% of P81,675,000 or P6,126,625.00 was withheld as tax by Metro Bank for remittance to the BIR, even when MJOPFI is co-owner and is exempt from income tax, and that a claim for P3,037,697.40, representing 49.59% of the tax withheld will have to be filed with the BIR. xx x ."

On May 7, 1997, believing that it is exempt from income tax, pursuant to this Court's decision in CTA Case No. 4244 entitled Miguel J. Ossorio Pension Foundation, Inc. vs. Commissioner of Internal Revenue, promulgated on November 2, 1990, and which was affirmed with finality in Commissioner of Internal Revenue vs. Court of Tax Appeals and Miguel J. Ossorio Pension Foundation, Inc., CA-GR No. 23980 dated January 20, 1993, Petitioner filed a claim for refund with BIR Regional Office No. 8, Revenue District No. 53, in the amount of P3,037,500.00, representing 49.59% of the total withholding tax paid of P6,125,625.00 (Exh. K).

On August 14, 1997, Revenue District No. 53 wrote Petitioner stating that under Section 26 of the Tax Code, Petitioner is not exempt from its income from the sale of real property; that the decision in CTA Case No. 4244 only exempted Petitioner from tax in its income from money market placement and on interests on deposits, and asking that documents granting Petitioner tax exemption and how Petitioner became co-owner be submitted (Exh. L). On September 3, 1997, Petitioner replied thereto, asserting that the applicable provision is not Section 26 of the Tax Code, but Section 53(b), as held by this Court in the aforementioned CTA Case No. 4244 (Exh. M). In its reply, Petitioner attached the following documents showing how and why MJOPFI, on behalf of the Pension Plan, became co-owner of the property in question.

1. Tax exemption ruling of the BIR on the Pension Plan, as Annex "I";
2. Board Resolution No. 92-24 of MJOPFI adopted on March 25, 1992, shown in the Secretary's Certificate, as Annex "J";
3. Board Resolution No. 96-46 of MJOPFI adopted on July 24, 1996, shown in the Secretary's Certificate Annex "J";
4. Memorandum of Agreement between VMC and MJOPFI dated February 24, 1994, as Annex "K";
5. Memorandum of Agreement between VMC and other subsidiaries dated February 24, 1997, as Annex "L".

Through a letter dated June 29, 1998 and received by the Office of RDO-Revenue District No. 53, BIR Reg. No. 8, Makati on July 1, 1998, Petitioner followed up its request for tax refund (Exh. N). There being no action on the part of the said Regional Office, Petitioner elevated its claim to herein Respondent Commissioner of Internal Revenue on October 28, 1998 (Exh. O). Again, Respondent did not act on Petitioner's claim notwithstanding another follow-up letter received by the Appellate Division, Tax Refund/Credit Case of the BIR on January 7, 1999 (Exh. P). Thus, Petitioner was constrained to file the instant Petition for Review on March 4, 1999 to toll the running of the two-year prescriptive period within which to file a claim for refund.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

6. The petitioner is not adversely affected by the decision or inaction of the respondent for the reason that the former is not the one who made the payment of the withholding tax in question;

7. The Memorandum of Agreement (Annex "H") is immaterial in this case since the Deed of Absolute Sale which was executed later clearly show that Victorias Milling Company, Inc. is the absolute and registered owner of a parcel of land known as Lot 1, Block 4, located at Barangay Alabang, Muntinlupa City;

8. The best evidence of ownership of the real property in question is not the Memorandum of Agreement but the Transfer Certificate of Title No. 183907;

9. The allegation, therefore, of the petitioner that the property under Transfer Certificate of Title No. 183907 is co-owned by the petitioner runs counter to the normal course of business transactions;

10. Even granting arguendo that the petitioner is a co-owner of the property under TCT No. 183907, still the transaction with respect to its share in the property is not exempt from income tax since the diversion of the petitioner's funds used to purchase such property is clearly done for purposes other than for the exclusive benefit of the employees, hence, a violation of one of the two requisites under Section 53(b) of the Tax Code;

11. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

12. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action;

13. Claims for refund are strictly construed against the claimants since they partake of the nature of an exemption from taxation.

Upon agreement of the parties, the issues We are tasked to resolve have been limited to the following:

1. Whether or not Petitioner is entitled to exemption from income/withholding tax under Section 53(b) [now Section 60(b)] of the Tax Code;

2. Whether or not the Petitioner is a party in interest entitled to claim the tax refund of the withholding tax paid by Victorias Milling Company, Inc.; and

3. Whether or not Petitioner is a co-owner of the real property covered by TCT No. 183907.

As regards the first issue, We agree with Petitioner that the matter has already been settled by this Court in CTA Case No. 4244 where We held that Petitioner is entitled to a refund of withholding taxes paid on interest income from direct loans and made by the retirement funds of the pension plan as well as final tax on yields from T-bill placements of the retirement fund of the pension plan paid to the BIR , for being exempt from income tax pursuant to Sec. 56 (b), now Sec. 60 (b), of the Tax Code.

Verily from the above, it is not the Petitioner itself that is entitled to exemption from income/withholding tax under Section 53(b) [now Section 60(b)] of the Tax Code, but the income or earnings of the employees' trust funds. As correctly pointed out by Respondent, Petitioner is not the pension trust itself but a separate and distinct entity whose function is to administer the pension plan for some employees of VMC.

We proceed to the second and third issues which to this Court, are interrelated, because if indeed, Petitioner is a co-owner of the real property covered by TCT No. 183907, then it may possibly be a party in interest entitled to claim a refund of the withholding tax paid by Victorias Milling Company, Inc..

After a careful evaluation of the evidence adduced by the parties, We are not convinced by Petitioner's assertion that it is a party in interest.

To prove its ownership over the subject lot, Petitioner presented the Secretary's Certificates showing how the purchase and eventual sale of the lot came about. Likewise, Petitioner presented various Memoranda of Agreement showing varying details. The first one executed on February 24, 1994 and notarized on March 3, 1994 showed that the lot in question was co-owned by VMC and Petitioner on a 50/50 basis. On the second one, however, likewise executed on February 24, 1994 and notarized on March 3, 1994, VMC only held the property in trust for North Legaspi Land Development Corporation, North Negros Marketing Co., Inc., Victorias Insurance Factors Corp., Victorias Science and Technical Foundation, Inc. and Canetown Development Corporation. The last Memorandum of Agreement, which allegedly cancelled previous understanding on the matter and notarized on March 19, 1997, showed that the property in question was co-owned by Petitioner, VMC and VIFC. There was no explanation given by Petitioner as to why there were three Memoranda of Agreement executed by the parties with different co-owners appearing therein.

We agree with Respondent that these pieces of evidence are self-serving and cannot by themselves prove Petitioner's ownership over the subject lot when the Transfer Certificate of Title, the Deed of Absolute Sale and the Monthly Remittance Return of Income Taxes Withheld disclose otherwise. This Court likewise wonders why Petitioner, knowing fully well that the income of its pension fund is exempt from income tax, not to mention that it has the obligation to protect the interest of the employees of VMC and its affiliates, did not bother to have the property transferred in its name. The various Memoranda of Agreement acknowledging Petitioner as co-owner was even executed years after the purchase of the lot took place, which casts more doubt on the alleged ownership of Petitioner.

Petitioner also failed to present any evidence to prove that the money used to purchase the lot came from the pension/retirement funds of VMC. Since, what is exempted from payment of the income tax as held by this Court in CTA Case No. 4244 is income of the trust or pension fund, Petitioner must show that the money used to purchase the lot belongs to the pension fund and failing in this regard, a refund cannot be sought.

To this Court, Petitioner is estopped from claiming tax exemption considering that VMC, by its execution of the Deeds of Absolute Sale, both during the purchase and subsequent sale of the subject lot, by having the lot registered solely in its name and consequently, by paying the tax in its name, has led the government to believe that it is the sole owner of the property in question. Petitioner may not now claim a refund of a portion of the tax paid by the mere expediency of presenting Secretary's Certificates and Memoranda of Agreement in order to prove its ownership as the same are not only self-serving and which can easily be devised to suit one's purpose and therefore merit very little weight.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** 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

164