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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION,
AS TRUSTEE OF VARIOUS RETIREMENT
FUNDS,
Petitioner,

- versus -

C.T.A. CASE NO. 4314

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JAN 24 1996

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DECISION

This petition for review is seeking for the refund of P15,191,111.11 allegedly representing erroneously and/or illegally collected final withholding taxes on income derived by petitioner, as trustee of various retirement funds, on savings and time deposits, money market placements and government securities for the calendar year 1987.

The facts of the case are as follows:

Petitioner is the trustee and investment manager of the following trust funds (FUNDS), namely:

Citibank Retirement Fund (Exh. "A")
CityTrust Retirement & Provident Fund (Exh."B")
Alcatel Trade International Phils.,Inc.(Exh."C")
Singapore Airlines, Inc. (Exh. "D")

Araneta University Foundation (Exh. "E")
Southeast Asian Fishery Dev. Center (Exh. "G")
International Flavor & Fragrances (Exh. "H")
Atlas Copco (Phils.), Inc. (Exh. "I")
American President Lines (Exh. "J")
Rhone Poulenc Phils., Inc. (Exh. "K")
The Goodyear Tire & Rubber Co. of the Phils., Ltd. (Exh. "L")
Firestone Tire Rubber Co. (Exh. "M")
A.H. Robins Phils., Inc. (Exh. "N")
Mercury Group Provident Fund (Exh. "O")
Singer Sewing Machine Company (Exh. "P")
Miguel J. Osorio Pension Foundation, Inc. (Exh. "R")
North Negros Marketing Co., Inc.
Philippine Packing Corporation (Exhs. "S" & "T")
C.C. Unson Co., Inc. (Exh. "U")
Nestle Phils., Inc. (Exh. "V")
Caltex (Phils.), Inc. (Exh. "W")
Association of International Shipping Lines, Inc. (Exh. "X")
Dow Chemicals Pacific Ltd. (Exh. "Y")
Merrell Dow Pharmaceuticals (Phils.), Inc. (Exh."Z")
Catholic Educational Assn. of the Phils. (Exh. "AA")
Royal Insurance (Exh. "AB")
Sime Darby Pilipinas, Inc. (Exh. "AC")
Boehringer Ingelheim (Phils.), Inc. (Exh. "AD")
J. Walter Thompson Company (Exh. "AE")
Cagayan Electric Power and Light Company, Inc. (Exh. "AF")
Mondragon International Phils., Inc. (Exh. "AG")
Aboitiz Group of Companies (Exh. "AH")
Pfizer, Inc. (Exh. "AI")
Pacific Enamel & Glass Mfg. Corp. (Exh. "AJ")
Philippine National Oil Company (Exh. "AK")
Armco Marsteel Alloy Corporation (Exh. "AL")
Air Line Pilots Association of the Philippines (Exh. "AM")
Citibank Early Retirement Plan (Exh. "AN")
Stal-Astra Refrigeration, Inc. (Exh. "AO")
Manila Golf & Country Club, Inc. (Exh. "AP")
Cyanamid Philippines, Inc. (Exh. "AQ")
Hemisphere Leo Burnett, Inc. (Exh. "AR")
BASF Phils., Inc.
Admiral Realty Co., Inc. (Exh. "AS")
European Chamber of Commerce of the Philippines. (Exh. "AT")

which were created pursuant to the employee retirement, provident, and profit sharing plans (PLANS) set up by the employers concerned for the purpose of providing retirement, separation, death and disability benefit to their respective employees. These PLANS, according to petitioner were found by the Commissioner as "qualified" tax-exempt having been met the requirements of a reasonable benefit plan prescribed by R.A. No. 4917 as implemented by Rev. Regs. No. 1-68 as amended.

During the year 1987, petitioner hold, manage, invest and reinvest the assets of the FUNDS which earned income. These income, petitioner asserts, were erroneously subjected to 20% final withholding tax by various financial institutions such as Far East Bank and Trust Company, Multinational Bancorporation and CityTrust Banking Corporation in view that the PLANS were tax-exempt.

Believing that it is entitled to a refund, petitioner on November 25, 1987 filed a written claim with the respondent requesting for the total amount of P15,191,111.11 representing erroneously and/or illegally collected final withholding taxes.

On December 28, 1988, petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period allowed by law.

In answer thereto, respondent avers that the petition states no cause of action as it does not allege the date when the tax sought to be refunded was paid (**Manufacturer's Bank and Trust Co., as trustee of Gem Trust Plans vs. The Commissioner of Internal Revenue, C.T.A. Case No. 1659, November 29, 1965**). Any amount claimed to have been withheld must be shown to have been paid and remitted to the coffers of the government. Presidential Decree No. 1959, which took effect on October 15, 1984, withdrew the exemption from withholding tax on interest from bank deposits and yield from deposit substitute. She also contends that in an action for the refund of taxes, the burden of proof is upon the taxpayer to show that taxes paid were erroneously or illegally collected, that it must comply with the provisions of Sections 292 and 295 of the Tax Code and that claims for refund are construed against claimants, the same being in the nature of an exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 3 SCRA 95**).

Petitioner submitted various documents in support of its case which consist, among others, of: (1) trust agreements between petitioner and the various retirement plans; (2) letter from the BIR confirming the tax exempt status of the PLANS; (3) Confirmations of Sale issued by Petitioner to its Trust and Investment Department in the latter's capacity as Trustee of the FUNDS; (4) Fixed Income Securities Placements and the interfolio computations and the adjustment notes; (5) Schedule of Placements for the year ended December 31, 1987 made by petitioner's Trust and Investment Department in behalf of the various FUNDS; (6) Debit Tickets issued by the Government Securities Department of the Central Bank to petitioner recording the latter's purchase of Treasury Bills; and (7) Credit Advices issued by the Government Securities Department of the Central Bank to the BIR recording the remittance of 20% final tax withheld from interest on taxable securities.

Respondent, on the other hand, failed to introduce controverting evidence. Both parties elect not to submit their respective memorandum.

Is petitioner entitled to the refund of 20% final withholding taxes in the amount of P15,191,111.11 alleged to have been erroneously and/or illegally collected?

We answer in affirmative.

The issue having been settled by the Supreme Court.

A ruling was laid down by the High Court in a precedent-setting case entitled **Commissioner of Internal Revenue vs. Court of Appeals, 207 SCRA 487** wherein, in an *en banc* decision, it intelligently ruled:

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To begin with, it is significant to note that GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Rep. Act. No. 4917 approved on 17 June 1967. This law specifically provided:

> **SECTION 1.** Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;" x x x (emphasis ours).

In so far as employees' trusts are concerned, the foregoing provision should be taken in relation to then Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, supra, which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and is repeated hereunder for emphasis:

> Sec. 56 *Imposition of Tax.* - (a) Application of tax. - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.
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> xxx xxx xxx
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> (b) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees x x x"

The tax-exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs from the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trusts for tax exemption.

And rightly so, by virtue of the raison d'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in Rep. Act. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

> Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that, a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representative, Vol. IV, Part. 2, No. 57, p. 1859, May 3, 1957: cited in **Commissioner of Internal Revenue vs. Visayan Electric Co., et. al.,** G.R.

No. L-22611, 27 May 1966, 23 SCRA 715); underscoring supplied.

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, cannot be deemed to extend to employees' trusts. Said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which excluded employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (**Villegas vs. Subido**, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

Notably, too, all the tax provisions herein treated come under Title II of the Tax Code on "Income Tax." Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII. Section 56(b), taken in conjunction with Section 56(a), <u>supra</u>, explicitly excludes employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b]), (now 53[b], Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payments at the source. If an employee' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

Petitioner also relies on Revenue Memorandum Circular 31-84, dated 30 October 1984, and Bureau of Internal Revenue Ruling No. 027-e-000-00-005-85, dated 14 January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No. 1959 is clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Pres. Decree No. 1959 did not have the effect of revoking the tax exemption enjoyed by employees' trusts, reliance on those authorities is now misplaced.

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It cannot be denied that based on the above authority, petitioner is entitled to the refund sought. Nevertheless, it is essential that the retirement plan should be qualified as exempt from income tax by the BIR in accordance with R.A. No. 4917 as implemented by Rev.

Regs. No. 1-68. It is on this premise that the exemption from the final withholding tax of the income from investment in treasury bills of the retirement fund is anchored (**Bank of the Philippine Islands as Trustee of the Employees' Retirement Fund of IBM Philippines, Inc., et al. vs. Commissioner of Internal Revenue, CTA Case Nos. 4533 to 4566 & 4681 to 4685, July 1, 1994**).

A perusal of the evidence on hand revealed, however, that Singapore Airlines, Inc., North Negros Mktg. Co., Inc., Caltex Phils., Inc., Phil. National Oil Company, Citibank Early Retirement Plan, BASF Phils., Inc., and Admiral Realty Co., Inc. have no BIR certifications on file while the certifications of Phil. Packing Corp., Dow Chemical Pacific Ltd., J. Walter Thompson Co., Cyanamid Phils., Inc., and Hemisphere Leo Burnett, Inc. were issued in the year 1988 or 1989 whereas the refund sought covers the year 1987. This Court also noted that Mondragon International Phils., Inc., Armco Marsteel Alloy Corporation, and Stal Astra Refrigeration, Inc. purported certifications of tax-exemption are not valid. The said letters merely informs the preceding companies that their application for qualification under RA 4917 are still pending with the Government and Tax Exempt Corporation Division. Therefore, the refund of the final withholding taxes of these FUNDS cannot be granted.

As to the substantiation of the amounts claimed, we took note of certain discrepancies. The total final tax withheld in some of the FUNDS were less than the amount claimed while in others the opposite were true. In both instances, only the amount claimed as refund which are supported and tally with the evidence submitted can be allowed. To wit:

	Amount Claimed	Refundable Amt. Per Evidence	Exh.	Allowable Refund
Citibank Retirement Fund	P1,769,599.62	P1,670,869.16	GGL	P1,670,869.16
CityTrust Retirement & Provident Fund	234,279.38	234,848.43	GGM	234,279.38
Alcatel Trade International Phils., Inc.	44,076.74	44,076.74	GGN	44,076.74
Araneta University Foundation	203.74	106.66	GGP	106.66
Southeast Asian Fishery Development Center	230,804.10	208,950.29	GGQ	208,804.10
International Flavor & Fragrances	15,057.18	15,057.18	GGR	15,057.18
Atlas Copco (Phils.), Inc.	87,741.97	87,741.97	GGS	87,741.97
American President Lines	81,150.36	81,150.36	GGT	81,150.36
Rhone Poulenc Phils., Inc.	40,391.26	40,391.26	GGU	40,391.26
The Goodyear Tire & Rubber Co. of the Phils., Ltd.	162,366.18	162,371.43	GGV	162,366.18
Firestone Tire Rubber Co.	480,515.13	423,615.61	GGW	423,615.61
A.H. Robins Phils., Inc.	80,617.39	74,685.44	GGX	74,685.44
Mercury Group Provident Fund	378,644.59	378,644.59	GGY	378,644.59
Singer Sewing Machine Company	201,185.19	201,185.19	GGZ	201,185.19
Singer Sewing Machine Company	54,313.01	54,323.19	HHA	54,313.01
Miguel J. Osorio Pension Foundation, Inc.	1,254,065.89	835,991.16	HHB	835,991.16
C.C. Unson Co., Inc.	15,906.52	15,906.52	HHG	15,906.52
Nestle Phils., Inc.	676,741.23	676,743.55	HHH	676,741.23
Association of International Shipping Lines, Inc.	12,121.63	12,121.63	HHJ	12,121.63
Merrell Dow Pharmaceuticals (Phils.), Inc.	54,507.68	54,367.49	HHL	54,367.49
Catholic Educational Assn. of the Phils.	323,242.39	323,242.39	HHM	323,242.39
Royal Insurance	18,864.55	18,864.55	HHN	18,864.55
Sime Darby Pilipinas, Inc.	86,371.13	86,371.26	HHO	86,371.13
Boehringer Ingelheim (Phils.), Inc.	168,382.78	168,382.78	HHP	168,382.78
Cagayan Electric Power and Light Company, Inc.	41,650.56	41,650.68	HHR	41,650.56
Aboitiz Group of Companies	1,014,926.33	1,014,926.33	HHT	1,014,926.33
Pfizer, Inc.	136,474.91	136,903.07	HHU	136,474.91
Pacific Enamel & Glass Mfg. Corp.	26,156.23	26,156.23	HHV	26,156.23
Air Line Pilots Association of the Philippines	234,303.28	234,310.10	HHY	234,303.28
Manila Golf & Country Club, Inc.	1,580.81	1,582.57	IIB	1,580.81
Manila Golf & Country Club, Inc.	2,193.22	2,196.02	IIC	2,193.22
European Chamber of Commerce of the Philippines	477.92	477.92	IIH	477.92
T O T A L	P7,928,912.90	P7,328,211.75		P7,327,038.97

This Court in its appreciation of petitioner's evidence found out that the numerous exhibits presented by the petitioner are sufficient to warrant its entitlement for the refund. The burden of proof was overturned by the petitioner.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund in favor of petitioner CityTrust Banking Corporation, as Trustee of Various Retirement Funds, the amount of P7,327,038.97 as determined above to be refunded to each of the qualified retirement plan.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among 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