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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

C.T.A. CASE NO. 5824

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 13 2001

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DECISION

This is a judicial claim for the refund of the amount of P731,190.45 filed by the Petitioner on April 23, 1999, representing alleged erroneously withheld and/or collected 20% final withholding tax on interest income from bank deposits.

As to how the issues in this case arose, this Court now proceeds to unravel the factual background as contained in the contending parties' Joint Stipulation of Facts:

1. That PAL is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9F PAL Center, Legazpi Street, Legazpi Village, Makati City;

2. That respondent is the Commissioner of Internal Revenue and is in charge of the assessment and collection of the 20% final tax on interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust

fund and similar arrangements, imposed on domestic corporations under Sec. 24(e)(1) [now Sec. 27(D)(1)] of the National Internal Revenue Code (NIRC), with principal office at the BIR Building, Agham Road, Diliman, Quezon City.

3. That on November 5, 1997, petitioner's AVP-Revenue Operations and Tax Services Atty. Edgardo P. Curbita, filed with the office of the then Commissioner of Internal Revenue Mdm. Liwayway Vinzons-Chato, a written request for refund of the amount of PHP2,241,927.22 (Annex "D" of the petition for review) which is the total amount of 20% final withholding tax withheld from the petitioner by various withholding agent banks, and which amount includes the 20% final withholding tax withheld by the United Coconut Planters Bank (UCPB) and Rizal Commercial Banking Corporation (RCBC) for the period starting March 1995 through February 1997, attaching thereto the certifications of the taxes withheld, referred to as Annexes "A" and "B" of the Petition for Review. The said request cites Section 13 of petitioner's franchise, Presidential Decree No. 1590 as petitioner's basis for claiming for refund;

4. That on December 4, 1997, the same AVP-Revenue Operations and Tax Services of Petitioner filed with the office of the then Commissioner of Internal Revenue Mdm. Liwayway Vinzons-Chato, another written request for refund involving the amount of PHP1,048,047.23 (Annex "L" of the petition for review) representing the total amount of 20% final withholding withheld by various depository banks of the petitioner which amount includes the 20% final withholding tax withheld by the Philippine National bank (PNB), Equitable Banking Corporation (EBC), and the Jade Progressive Savings and Mortgage Bank (JPSMB) for the period starting March 1995 through November 1997, attaching thereto the certifications of the taxes withheld, referred to as Annexes "F", "G",

and "H" of the Petition for Review. As in the first request, this request cites Section 13 of P.D. 1590 as petitioner's basis for claiming refund;

5. That the BIR Chief of the Appellate division Rodulfo L. Salazar acknowledged (Annex "M" of the petition for review) the filing of the petitioner's December 4, 1997 written request (Annex "L" of the petition for review) for refund of the above-mentioned 20% final withholding tax withheld by PNB, EBC, and JPSMB;

6. That up to this date, the respondent has not responded to the above-mentioned written requests for refund admitted by the respondent as having been filed by the petitioner;

7. That petitioner is claiming under this Petition for Review the refund only of the amount of PHP731,190.45 representing the 20% final withholding tax withheld on petitioner's interest income for the period January 1997 to November 1997;

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To contradict Petitioner's assertions, Respondent, in his Answer filed on June 16, 1999, interposed the following Special and Affirmative Defenses, to wit:

> 5. The "in lieu of all taxes" provision in the petitioner's franchise applies only if petitioner paid the taxes under subsections (a) and (b) of Presidential Decree No. 1590 and since petitioner is not paying any of the said taxes, then no such tax can be applied in lieu of the 10% overseas communications tax, hence, petitioner is subject thereto and therefore not entitled to the refund claimed;
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> 6. Petitioner's claim has partially, if not totally, prescribed;
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> 7. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

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

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

10. Well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation. (Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968).

On October 12, 2000, this case was considered submitted for decision sans the memorandum of the Respondent.

The issues in this case are four-fold.

a. Whether or not Petitioner PAL is entitled to the refund of the 20% final withholding tax prayed for;

b. Whether or not the "in lieu of all taxes" provision in the Petitioner's franchise applies only if Petitioner paid the taxes under subsections (a) and (b) of Presidential Decree No. 1590;

c. Whether or not Petitioner's claim has partially, if not totally, prescribed;

d. Whether or not petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid.

In its memorandum filed on June 8, 2000, Petitioner's protestation hinges mainly on the terms of its franchise, i.e. Section 13 of PD 1590, which allegedly subjects the Petitioner only to the payment of the basic corporate income tax based on its annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code, or a franchise tax of two percent (2%) of its gross revenues derived from all sources, whichever will result in a lower tax and exempts it from other kinds of taxes since the said franchise also provides that the aforesaid taxes 'shall be in lieu of all other taxes, x x x of any kind, nature or description imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, x x x." Thus, Petitioner concludes that the 20% final tax on its interest income from bank deposits and its yield from deposit substitutes such as Treasury Bills and notes were therefore erroneously collected in view of Petitioner's exemption from the said tax under PD 1590.

In addition to this, Petitioner opines that it can validly ask for a refund of the tax withheld in the interest earned by its bank deposits or the yield from its deposit substitutes regardless of the fact that it did not pay the basic corporate income tax or the franchise tax of 2% on its gross revenues since its tax exemption under the franchise is not dependent upon payment of either of the two.

We are not persuaded.

The vortex of the controversy lies on the provision of Section 13 of PD 1590, and which, for proper disposition of this case are hereby reproduced:

> "**Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result to a lower tax:
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> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided that with respect to international air-transport service, only the gross passengers,

> mail, and freight revenues from its outgoing flights shall be subject to this tax.
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> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed, or collected by any municipal, city, or provincial, or national authority or government agency, now or in the future x x x".

The wordings of the aforesaid franchise are quite clear and not susceptible of several interpretations nor is there any ambiguity in its language. The rule is that the intent of the legislature to be ascertained and thereafter given effect is the intent expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.

Prescinding from the above, the Petitioner's franchise clearly provides that "in consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise" either the basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code, or a franchise tax of two percent (2%) of the gross revenues derived by the grantee from all sources.

From the foregoing, it is quite unequivocal that Petitioner is required under its franchise to pay a franchise tax of two percent of its gross revenues without any further qualification that it is exempt from such when it is at a net loss position at the end of the taxable year. Under the franchise, it is mandatory that the Petitioner must pay its franchise tax of two percent (2%) or to pay its corporate tax so that it may avail of the incentives provided under the last paragraph that "the tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kinds x x x.", regardless of whether or not it suffered a net loss during a particular taxable year.

The phrase "in lieu of" means instead of, in place of; or in substitution for (Black vs. Barnes, 46 P. 2d 625, 626, 142 kan. 361; Rutherland vs. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Pharses, Vol. 21, p. 472). The "in lieu of" implies the existence of something for which a substitution is being made. Analyzing, therefore, the wordings of the franchise more particularly the last paragraph of Section 13 of PD 1590, it is clear that Petitioner has the option to pay either a corporate income tax or 2% franchise tax to avail of the incentive. Had Petitioner paid the 2% franchise tax, then the final withholding taxes withheld may be considered as "other taxes" as it falls under income tax. However, should it choose to avail of the first alternative, then final withholding tax on income may not be considered as "other taxes". In other words, should PAL opt to avail of the first alternative, that is, to pay corporate income tax, payment of final withholding tax is deemed part of its corporate income tax liability, therefore not refundable.

Withal, exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic petroleum Co. vs. Llanas, 49 Phil. 466 cited in Collector vs. Manila Jockey Club, Inc. vs. Commissioner of Customs, L-8755, March 23, 1956).**

Other issues raised in the petition are deemed moot and academic by the above pronouncements.

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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