REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NIPPON LIFE INSURANCE COMPANY OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6323

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 24 2003

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DECISION

This case involves a claim for refund in the amount of P11,410,139.68 allegedly representing erroneously withheld 20% final tax on interest income derived by petitioner from its investments in long term Fixed Rate Treasury Bonds (Bonds, for brevity) and gain on their subsequent sale for the period May 28, 1998 to October 20, 1999.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the 21st Floor, Tower 2, RCBC Plaza, 6819 Ayala Avenue cor. Sen. Gil Puyat Avenue, Makati City (*par. 1, Stipulation of Facts*). It is engaged in the business of life insurance. As such, it is required under the Insurance Code of the Philippines to invest and purchase certain government securities during the course of its operations. These investments consist of bonds or other evidences of debt of the Philippine Government, its political subdivisions or instrumentalities, or of government-owned or controlled corporations and entities (*pars. 3 and 4, Stipulation of Facts*).

For the period May 28, 1999 to February 25, 1999, petitioner purchased from various banks in the secondary market, namely, Hongkong and Shanghai Banking Corporation (HSBC) and Rizal Commercial Banking Corporation (RCBC), long term Bonds issued by the Bureau of Treasury with the following details:

Date of Purchase	Selling Bank	Exh.	Bond Series No.	Term	Coupon Rate	Issue Date	Issue/ Face Amount
28-May-98	HSBC	A, B	PIBD1008E056	10 yrs.	19.00%	28-May-98	P10,000,000.00
28-May-98	HSBC	A, B	PIBD1008E056	10 yrs.	19.00%	28-May-98	P12,200,000.00
3-Feb-99	HSBC	C, D	PIBD1008K077	10 yrs.	18.00%	26-Nov-98	P32,093,909.16
5-Feb-99	RCBC	E, F	PIBD1008E056	10 yrs.	19.00%	28-May-98	P 50,000,000.00
5-Feb-99	RCBC	G, H	PIBD1008KT29	10 yrs.	17.80%	26-Nov-98	P 91,000,000.00
5-Feb-99	RCBC	I, J	PIBD1008K077	10 yrs.	18.00%	26-Nov-98	P15,000,000.00
5-Feb-99	RCBC	G, H	PIBD1008KT29	10 yrs.	17.80%	26-Nov-98	P 20,000,000.00
5-Feb-99	RCBC	G, H	PIBD1008KT29	10 yrs.	17.80%	26-Nov-98	P32,000,000.00
5-Feb-99	RCBC	I, J	PIBD1008K077	10 yrs.	18.00%	26-Nov-98	P36,000,000.00
25-Feb-99	RCBC	K, L	PIBD1009B084	10 yrs.	16.50%	25-Feb-99	P57,000,000.00
25-Feb-99	RCBC	K, L	PIBD1009B084	10 yrs.	16.50%	25-Feb-99	P26,000,000.00

On the dates that petitioner purchased the Bonds, the Bonds offered yield rates different from their respective fixed interest rates. The Bonds' different yield rates at the time of acquisition determined whether petitioner had to purchase the Bonds at a premium or at a discount. Thus, a yield rate lower than the Bonds' interest coupon rate implied that petitioner had to pay a premium, or a price higher than the Bonds' issue or face value, to acquire the Bonds. Conversely, a yield rate higher than the Bonds' interest coupon rate meant that the Bonds could be acquired at a *discount*, or for a price lower than the Bonds' issue or face value.

Upon purchase of the Bonds, petitioner's *total cash outlay* included the purchase price (as determined by the yield rate on the date of purchase) and any accrued interest payable to the selling banks at the time of purchase, *net* of applicable final withholding taxes on the purchase price and the accrued interest, as imposed under the NIRC. Thus, on the different dates of purchase, the gross cost of purchasing the Bonds and the corresponding amount of taxes withheld on cost were computed as follows:

Date of Purchase	Selling Bank	Bond Series No.	Issue/ Face Amount	Gross Cost	Tax Withheld on Gross Cost
28-May-98	HSBC	PIBD1008E056	P 10,000,000.00	P 10,224,205.45	P 18,755.72
28-May-98	HSBC	PIBD1008E056	P 12,200,000.00	P 12,473,530.65	P 22,881.98
3-Feb-99	HSBC	PIBD1008K077	P 32,093,909.16	P 35,026,700.21	P 274,722.58
5-Feb-99	RCBC	PIBD1008E056	P 50,000,000.00	P 56,768,948.80	P 664,456.14
5-Feb-99	RCBC	PIBD1008KT29	P 91,000,000.00	P 98,313,506.64	P 682,173.31
5-Feb-99	RCBC	PIBD1008K077	P 15,000,000.00	P 16,350,785.40	P 126,340.52
5-Feb-99	RCBC	PIBD1008KT29	P 20,000,000.00	P 21,607,364.10	P 149,928.20
5-Feb-99	RCBC	PIBD1008KT29	P 32,000,000.00	P 34,571,782.56	P 239,885.13
5-Feb-99	RCBC	PIBD1008K077	P 36,000,000.00	P 39,241,884.95	P 303,217.23
25-Feb-99	RCBC	PIBD1009B084	P 57,000,000.00	P 57,085,938.58	P 7,974.44
25-Feb-99	RCBC	PIBD1009B084	P 26,000,000.00	P 26,309,200.05	P 3,637.36
					P 2,493,972.61

For the second quarter of 1999, petitioner earned interest income on the above Bonds in the gross amount of P27,064,451.82, which was subjected to 20% final withholding tax by the Bureau of Treasury in the total amount of P5,412,890.36 (*Exhibit JJ, inclusive of submarkings*), broken down as follows:

Coupon Date	Bond Series No.	Gross Interest Income	Less:20% Final Withholding Tax	Net Interest Income
28-May-99	PIBD1008E056	P 950,000.00	P 190,000.00	P 760,000.00
28-May-99	PIBD1008E056	1,159,000.00	231,800.00	927,200.00
26-May-99	PIBD1008K077	2,888,451.82	577,690.36	2,310,761.46
28-May-99	PIBD1008E056	4,750,000.00	950,000.00	3,800,000.00
26-May-99	PIBD1008KT29	8,099,000.00	1,619,800.00	6,479,200.00

26-May-99	PIBD1008K077	1,350,000.00	270,000.00	1,080,000.00
26-May-99	PIBD1008KT29	1,780,000.00	356,000.00	1,424,000.00
26-May-99	PIBD1008KT29	2,848,000.00	569,600.00	2,278,400.00
26-May-99	PIBD1008K077	3,240,000.00	648,000.00	2,592,000.00
TOTAL		P 27,064,451.82	P 5,412,890.36	P 21,651,561.46

In 1999, petitioner sold the Bonds to Citibank N.A., Standard Chartered Bank (SCB) and HSBC, either at a premium or a discount, depending on whether the Bonds offered yield rates that were lower or higher than their respective coupon interest rates at the time of sale. The proceeds which petitioner received from the sale of the Bonds included the selling price and any interest income which petitioner earned during the period it held the Bonds, net of final withholding taxes on the selling price and the interest income earned, detailed in the table below (*Exhibits M to FF, inclusive of submarkings*):

Date of Sale	Buying Bank	Bond Series No.	Gross Selling Price	Tax Withheld on Selling Price	Interest Income Earned	Tax Withheld on Interest
17-Jun-99	Citibank	PIBD1008E056	P 12,156,416.93	P 236,191.75	P 100,277.78	P 20,055.56
18-Jun-99	Citibank	PIBD1008E056	P 14,830,244.12	P 288,103.26	P 128,777.78	P 25,755.56
21-Sep-99	HSBC	PIBD1008K077	P 35,596,384.92	P 353,736.21	P 1,845,399.78	P 369,079.96
20-Oct-99	HSBC	PIBD1008E056	P 58,794,686.87	P 955,975.27	P 3,747,222.22	P 749,444.44
17-Sep-99	HSBC	PIBD1008KT29	P 100,417,285.83	P 952,536.59	P 4,994,383.33	P 998,876.67
17-Sep-99	HSBC	PIBD1008K077	P 16,696,000.86	P 171,791.02	P 855,000.00	P 171,000.00
20-Sep-99	SCB	PIBD1008KT29	P 22,069,130.22	P 209,492.26	P 1,137,222.22	P 227,444.44
21-Sep-99	HSBC	PIBD1008KT29	P 35,186,644.66	P 321,351.96	P 1,819,555.56	P 363,911.11
21-Sep-99	HSBC	PIBD1008K077	P 39,928,755.66	P 396,788.79	P 2,070,000.00	P 414,000.00
24-May-99	HSBC	PIBD1009B084	P 60,365,790.52	P 326,506.28	P 2,325,125.00	P 465,025.00
28-May-99	Citibank	PIBD1009B084	P 28,471,657.12	P 251,587.10	P 1,108,250.00	P 222,568.70
TOTAL				**P 4,464,060.49**		**P 4,027,161.44**

On October 25, 1999, the BIR issued BIR Ruling No. 166-99, providing that the interest income, yield or gain derived from bonds, debentures or certificates of indebtedness as deposit substitutes, which are ordinarily subject to 20% final tax under

Section 27(D)(1) of the NIRC, should be excluded from the gross income if the bonds, debentures or the certificates of indebtedness have maturities of more than five (5) years.

On January 7, 2000, BIR Ruling No. 016-00 was issued, with the BIR reiterating its stand that "if the maturity period of the bonds issued through the Bureau of Treasury will be more than five (5) years, the gains that may be derived therefrom by the bondholders shall accordingly be exempt from the 20% final withholding tax." The BIR stated further that: "Since the law speaks of the exclusion from gross income of all <u>gains</u> derived from long-term investments, it follows that embraced thereunder are income, yield or interest, which are all synonymous with gains, whether discounted or at premium. Thus, the exemption applies to interest/coupon or profit from the principal of such long-term regular or SDT bonds complying with the statutory period."

On the strength of the aforementioned rulings, petitioner, on July 23, 2001, filed with the Revenue District Office No. 34 of the Bureau of Internal Revenue, an administrative claim for refund of the amount of P11,410,139.68 allegedly representing income taxes erroneously withheld by the Bureau of Treasury from its investment in long term Bonds for the period May 28, 1998 to October 20, 1999, computed as follows:

Withholding Taxes on Selling Price	P 4,464,060.49
Withholding Taxes on Accrued Interest Income	4,027,161.44
Withholding Taxes on Actual Interest Income Earned on 26 May and 28 May 1999	5,412,890.36
Subtotal	P13,904,112.29
Less: Tax Withheld on Purchase of Bonds	2,493,972.61
Total Withholding Taxes Subject to Refund	**P11,410,139.68**

Without waiting for an answer from the respondent, petitioner on the next day, July 24, 2001, filed the instant petition for review.

On the basis of the issues jointly stipulated by the parties, the court is now tasked to resolve the following controversies:

(a) Whether or not petitioner purchased the Bonds from 28 May 1998 to 25 February 1999 from various banks in the secondary market;

(b) Whether or not petitioner purchased the Bonds at a premium or a discount amounting to a total cash outlay of P407,973,847.39, which takes into account, among others, the withholding taxes on the purchase price amounting in part to P2,493,972.61, as a deduction from the amount paid to the selling banks;

(c) Whether or not petitioner held on to the Bonds from the dates of purchase until various dates in the second half of 1999 when the Bonds were sold to Citibank, Hongkong Shanghai Banking Corporation and Standard Chartered Bank;

(d) Whether or not during the foregoing period, specifically on 26 May and 28 May 1999, petitioner received interest income on the Bonds amounting to P21,651,561.46, net of P5,412,890.36 representing the 20% final tax imposed under the NIRC;

(e) Whether or not the Bureau of Treasury withheld the amount of P5,412,890.36 as 20% final withholding taxes from petitioner's investment in the Bonds during the entire holding period, and remitted such amount to the BIR;

(f) Whether or not petitioner received a total of P436,152,989.45 from the sale of the Bonds to Citibank, HSBC and SCB, which represent the gross selling price of the Bonds and the accrued interest income thereon on the date of the sale, net of deductions for withholding taxes from the foregoing, amounting to P4,464,060.49 and P4,027,161.44, respectively;

(g) Whether or not the administrative claim for refund and the Petition for Review were filed within the 2-year prescriptive period for recovery of taxes erroneously or illegally collected, prescribed under Section 229 of the NIRC;

(h) Whether or not the term "gains", as used in Section 32(B)(7)(g) of the National Internal Revenue Code of the Philippines ("NIRC"), encompasses all forms of "income" derived from bonds, debentures and other certificates of indebtedness with a maturity of more than 5 years, including the interest income and yield derived from such long-term certificates of indebtedness, considering the connotation of the term "gains" in relation to the financial treatment of bonds, debentures and other certificates of indebtedness;

(i) Whether or not interest income derived from the purchase of Treasury Bonds with a maturity of more than five (5) years is exempt from the 20% withholding tax imposed under the NIRC;

(j) Whether or not BIR Ruling Nos. 166-99 and No. 016-2000 dated 25 October 1999 and 7 January 2000, respectively, are applicable in the instant case;

(k) Whether or not the total amount of P11,410,139.68 was withheld by the Bureau of Treasury from petitioner's investments in the Bonds, and remitted to the BIR; and

(l) Whether or not petitioner is entitled to the refund of P11,410,139.68 as taxes erroneously withheld by the Bureau of Treasury on petitioner's investment in the Bonds.

We shall resolve first the legal issues under letters h, i, and j, which center on the proper interpretation of the term "gains" as used in Section 32(B)(7)(g) of the Tax Reform Act of 1997. Under the said section, gains realized from the sale or exchange or retirement of bonds, debentures or other certificates of indebtedness with a maturity of more than five (5) years shall not be included in gross income and shall be exempt from taxation. Petitioner interpreted the word "gains" in Section 32(B)(7)(g) as broad enough to include interest income from Bonds.

To support its view that interest from the Bonds is exempt from tax, petitioner cited respondent's own rulings, namely, BIR Ruling No. 166-99 dated October 25, 1999, BIR Ruling No. 016-2000 dated January 7, 2000, and BIR Ruling No. 020-01 dated May 31, 2001.

In BIR Ruling No. 166-99, issued on October 25, 1999 and addressed to Aegon Life Insurance (Philippines), Inc., respondent ruled that interest income or yields or gain from the sale of bonds, debentures and certificates of indebtedness with maturities of more than five (5) years are excluded from gross income in accordance with Section 32(B)(7)(g) of the 1997 Tax Code and therefore exempt from the 20% final withholding tax on deposit substitutes. BIR Ruling No. 166-99 states in pertinent part:

> "B. As a general rule, the interest income on currency bank deposit and yield or other monetary benefit from these "deposit substitutes" and similar arrangement derived by banks and non-bank financial intermediaries are being taxed at the final rate of 20% under Section 27(D)(1) of the 1997 Tax Code.
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> However, Section 32(B)(7)(g) of the 1997 Tax Code, provides an exception, thus:
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> "Section 32. Gross Income. —
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> xxx xxx xxx
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> "(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
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> xxx xxx xxx
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> "(7) Miscellaneous Items. —
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> xxx xxx xxx
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> "(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years."
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> The idea therefore, is to still treat bonds, debentures or other certificates of indebtedness as "deposit substitutes" the interest income, yield or gain derived therefrom subject to the 20% final tax under Section 27(D)(1) of the 1997 Tax Code, but exclude said interest income, yield or gain from the gross income if the bonds, debentures or the certificate of indebtedness have maturities of more than five (5) years. Conversely, only

> the income derived on these debt instruments with maturity of more than five (5) years shall be excluded from the gross income.
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> Furthermore, the term sale is not limited to the subsequent transfer of the instrument but to its origination and issuance, as well. Thus, from the time of its issuance, we should consider the "income" which is actually the amount coming to a person within a specified time, whether as payment for the services, interest, or profit from investment. Its usual synonyms being "gain", "profit", "revenue". (Trefry v. Putnam, 116 N.E. 904, 907 227 Mass. 522, L.R.A. 1917F, 806." (Words & Phrases, Gain, page 11, Permanent Edition 18) (BIR Ruling No. 166-99)

Notwithstanding the abovementioned rulings, we cannot agree with petitioner's contention that interest income on its long term investments in Bonds should be considered as 'gains' exempt from income tax pursuant to Section 32(B)(7)(g) of the 1997 Tax Code. In a number of cases involving a similar issue ***(Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6142, February 4, 2002; Malayan Reinsurance Corporation (formerly Eastern General Reinsurance Corporation) vs. Commissioner of Internal Revenue, CTA Case No. 6252, July 24, 2002; Malayan Zurich Insurance Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6251, September 30, 2002; First Nationwide Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6253, October 3, 2002; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6228, December 4, 2002; and Malayan Insurance Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6243, December 16, 2002)***, this court interpreted the word "gains" under Section 32(B)(7)(g) of the 1997 Tax Code in this wise:

> "We take the 1997 view that 'gains' as the term is used therein in Section 32(B)(7)(g) of the 1997 Tax Code cannot include interest since it clearly

refers to gains from the sale of bonds, debentures and other certificates of indebtedness.

"Initially, it must be pointed out that whereas the term 'gains' includes 'interest' as a general rule, this rule cannot be applied to Section 32(B)(7)(g) of the 1997 Tax Code which particularly refers to 'Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness' in its title and 'Gains realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness with a maturity of more than five (5) years' in its body. Stated otherwise, Section 32(B)(7)(g) of the 1997 Tax Code specifically refers to gains from the sale of bonds, debentures and other certificates of indebtedness as contradistinguished from the term 'gains' in its general sense which is synonymous to income.

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"From the aforequoted Section 32(A) of the 1997 Tax Code, it is clear that there is a distinction between 'gains derived from dealings in property' and 'interests', which are separately classified as items of gross income. 'Gains realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness' would fall under the category of 'gains derived from dealings in property'. On the other hand, 'interests' would include interest from bonds, debentures and other certificate of indebtedness. Gain realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness and interest from bonds, debentures and other certificate of indebtedness fall under separate and distinct income categories.

"It should be noted that both Sections (24)(B)(1) and 25(A)(2) of the 1997 Tax Code expressly exempt interest derived from certain long-term deposit or investment (covered by Bangko Sentral ng Pilipinas [BSP] certificates and with maturity of five years or more) by citizens, resident aliens and non-resident aliens engaged in trade or business within the Philippines from income tax. However, there is no such exemption from income tax on such interest for corporation, domestic or foreign, under Sections 27 and 28 of the 1997 Tax Code.

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There is a clear distinction between interest from bonds and gain from the sale of bonds. It is only the 'Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years' that is excluded from gross income and thus exempt from income tax under Section 32(B)(7)(g) of the 1997 Tax Code. Such gains from sale or exchange or retirement of bonds, debentures

> or other certificate of indebtedness fall within the general category of 'Gains derived from dealings in property' as distinguished from interest from bonds, debentures or other certificate of indebtedness, which fall within the general category of 'Interests' under Section 32(A) of the 1997 Tax Code.
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> We believe that if Congress intended to exempt interest from bonds, debentures and other certificates of indebtedness under Section 32(B)(7)(g) of the 1997 Tax Code, it would have done so in clear and specific terms. The fact that it used the term 'Gains from sale' in the aforementioned section, knowing fully well of the reference to interest under Sections 24, 25, 27 and 28 of the 1997 Tax Code shows that it did not intend to exempt such interest under the aforementioned Section 32(B)(7)(g).

In the case of ***Nippon Life Insurance Company of the Philippines, Inc., vs. Commissioner of Internal Revenue, CA-G.R. SP No. 69224, November 15, 2002***, the Court of Appeals, in affirming our pronouncement in the appealed case, elucidated, thus:

> The CTA is absolutely correct. Income is the flow of money to an individual or corporation within a specified time, as payment for services, interests, or profits from investments. Income is the return in money from one's business, labor or capital invested. The famous analogy used by the Supreme Court described property, labor and capital as trees and income as their fruits. Thus, income is synonymous with profit or gain. Nippon used this general concept of income or gain to include interest within the meaning of Section 32(B)(7)(g). This strained interpretation suffers from serious flaws.
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> First, while the Tax Reform Act adhered to the above definition of income, it also classified income into the following categories: compensation for services, income derived from the conduct of business or exercise of profession, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, prizes and winnings, pensions, and a partner's distributive share from net income of a general professional partnership. Section 32(B)(7)(g) clearly refers to gains realized from the sale, exchange or retirement of bonds, among others, with a maturity date of more than five (5) years. There is no reason to confuse gains from sale of bonds with gains in the general sense of income. Nippon argued that the law did not qualify the term "gains" but it is impossible not to see that the law did qualify such term and restricted it to gains from sale of bonds.

Section 32(B) enumerates the exclusions from gross income. Exclusions, like tax exemptions, are highly disfavored in law. A person claiming a tax exemption must justify his claim by the clearest terms possible because an exemption from the common burden of taxation is not allowed upon vague implications but on language too plain to be mistaken. In the instant case, Nippon's claimed exclusion runs counter to the plain, unequivocal language of the law. It resorted to the legislative intent behind the provision to justify departure from the literal meaning but we all know this is prohibited. The only intent that must be given effect is the one 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. To depart from the meaning expressed by the words of the statute is to alter the statute and legislate, not to interpret. A statute which is plain, clear and free from doubt is not subject to construction; there is no need for interpretation, only application.

In enacting the Tax Reform Act, the legislature may have intended to develop the capital market and encourage savings in long-term investments but even under the restrictive interpretation that gains under the subject provision means gains from sale of bonds, debentures and other certificates of indebtedness, such legislative intent still finds full expression. Section 32(B)(7)(g) as written and as interpreted by the CTA is still an incentive to the development of the bond market because it excludes gains from sales from the computation of the gross income. This may not be as sweeping as Nippon would have wanted to but it is an incentive nonetheless, which is faithful to the legislative intent. Nippon's all or nothing stance on the exclusion of gains from bonds finds no support in either the language or intent of the law.

Nippon's position must have drawn inspiration from the tax exemption of long-term deposits under Section 24(B)(1) and 25(A)(2) of the Tax Reform Act. However, these provisions fall under Chapter III, entitled Tax on Individuals and cover specifically citizens/resident aliens and non-resident aliens, respectively. On the other hand, Chapter IV, the Tax on Corporations does not contain a similar exemption on long-term deposits held by corporations, such as Nippon. Thus, the CTA correctly concluded that interests income on bonds held by corporations are not tax exempt, unlike those held by individuals. This is the law but Nippon could not abide by this and so it attempted to make up for this deficiency in Chapter IV by enlarging the scope of Section 32(B)(7)(g). For these unassailable reasons, the petition must fail.

Rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous ***(Philippine Bank of Communications vs. Commissioner of Internal Revenue, G. R. No. 112024, January 28, 1999)***.

We conclude in the present case that the aforementioned BIR rulings are erroneous. Such rulings were based on the mistaken belief that the term "gains" as used in Section 32(B)(7)(g) of the 1997 Tax Code include interest ***(Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, supra.).***

It is a well-settled rule of statutory construction that tax exemptions are strictly construed against the taxpayer. Consequently, where Section 32(B)(7)(g) of the Tax Code, which grants tax exemption, is susceptible of a restrictive interpretation, such interpretation must be adopted.

From the above discussion, only the gain from sale (as distinguished from interest) of bonds, debentures or other certificate of indebtedness with maturity of more than five years shall be exempt from income tax. Clearly, petitioner is barred from claiming the refund of the 20% final withholding tax paid on actual and accrued interest income from its investments in 10-year Bonds in the total amount of P9,440,051.80, to wit:

Actual withholding tax on interest income received for the second quarter of 1999	P5,412,890.36
Add: Withholding tax paid on accrued interest income on sale of bonds	4,027,161.44
Total withholding taxes paid on interest income	P 9,440,051.80

We now dwell on the remaining factual issues of the case.

We rule first on the issue of the timeliness of the administrative and judicial claims for refund on the remaining 20% withholding tax on gain on sale of long-term Bonds in the sum of P1,970,087.88, computed as follows:

Withholding Taxes on Selling Price	P 4,464,060.49
Less: Tax Withheld on Purchase of Bonds	2,493,972.61
Withholding Taxes on Gain on Sale of Bonds	**P 1,970,087.88**

The above claim covers final taxes withheld starting May 24, 1999 or during the second quarter of 1999. Counting from July 26, 1999 (July 25, 1999 being a Sunday), the considered date of payment of final taxes withheld for the second quarter of 1999, petitioner had until July 25, 2001 (*year 2000 is a leap year*) within which to file its administrative and judicial claims for refund. Clearly, both petitioner's claim for refund filed with the BIR on July 23, 2001 and this petition for review filed on July 24, 2001 fall within the two-year prescriptive period.

Thus, we proceed to determine whether or not petitioner was able to prove its payment of final withholding taxes on gain on sale of long-term Bonds by clear and convincing evidence.

Records show that petitioner purchased the subject Bonds from May 28, 1998 to February 25, 1999 from the secondary market, HSBC and RCBC, as evidenced by various Confirmations of Outright Sale of Government Securities (*Exhibits A to L, inclusive of submarkings*). Petitioner subsequently sold these Bonds to Citibank, HSBC and SCB, as evidenced by its own Confirmations of Outright Sale of Government Securities and/or Confirmations of Outright Purchase of Government Securities issued by the buyers (*Exhibits M to FF, inclusive of submarkings*). However, in the said documents evidencing purchase and sale of Bonds, the court noted that there was no payment of final withholding tax reflected. In order to prove its payments of final withholding taxes on the said purchase and sale of Bonds, petitioner presented letters from its sellers of Bonds, HSBC and RCBC *(Exhibits MM and NN)*, and from its buyers of Bonds, Citibank, HSBC, and SCB *(Exhibits MM, OO, and PP)*, certifying that herein petitioner purchased/sold certain fixed rate treasury notes/securities with the corresponding taxes therein withheld. While the amounts of final taxes withheld as claimed by petitioner on its purchase and sale of Bonds tally with the amounts of final taxes withheld reflected in the certifications, this court cannot consider the letters-certifications alone as valid proofs of final withholding taxes. Firstly, the persons who issued the certifications were not presented in court to attest to the accuracy of the entries made therein. More importantly, under Section 58(B) of the Tax Code, a prescribed form is required to be accomplished by every withholding agent to be issued to the recipient of income. Section 58(B) of the Tax Code is quoted hereunder for easy reference:

> **SEC. 58. *Returns and Payment of Taxes Withheld at Source.***
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> **(A)** xxx
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> **(B)** ***Statement of Income Payments Made and Taxes Withheld***. – Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later that the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

The written statement referred to above with respect to final tax withheld is BIR Form No. 2306 (*formerly BIR Form No. 1743-2*) denominated as "Certificate of Final Income Tax Withheld" *(Revenue Regulations No. 7-96)*, which form is the best evidence to prove that final income tax was withheld and remitted to the Bureau of Internal Revenue *(ITAD Ruling No. 031-01)*. Hence, the letters-certifications, standing alone, carry little probative value.

Moreover, since petitioner failed to present as evidence the proof of withholding using the prescribed form, the court found it necessary for the petitioner to prove the remittance of the alleged final withholding tax on gain on sale of bonds. Unlike the remittance of final withholding tax on interest of bonds which is the duty of the Bureau of Treasury, the obligation to remit withholding tax on gain on sale of bonds lies on the buyer or seller of the bonds, depending on whether the bonds were sold at a premium or at a discount. Again, petitioner failed to adduce evidence to prove remittance of the alleged final withholding tax on the gain on sale of bonds. Thus, the court cannot determine if the alleged erroneously paid taxes went to the coffers of the government.

It is likewise worth stressing that the final withholding taxes on the purchase and sale of bonds were on gross cost or selling price. This means that the final withholding taxes on purchase and sale of bonds may have included withholding taxes on accrued interest income attributed to the holding period of the Bonds. Thus, there must be proper segregation or details of final withholding tax because, as we held, the final withholding tax on interest income on long-term bonds is not refundable. Since petitioner failed to show how the final withholding taxes on gross cost and selling price were computed, this court has no way of verifying if the amount of P1,970,087.88 represents a valid final taxes withheld on gain on sale of bonds alone.

Tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822)***. The power of taxation is a high prerogative of sovereignty, its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied ***(84 C.J.S., pages 659 to 800; cited in Philippine Telegraph and Telephone Corporation vs. Commission on Audit, et al., G.R. No. L-55236, December 12, 1986)***.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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