REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 45
(C.T.A. Case No. 6393)

Present:
Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:

MAR 28 2005

x---x

DECISION

BAUTISTA, J.:

This is a Petition for Review seeking the reversal and setting aside of the Decision of this Court's Division dated April 13, 2004, denying petitioner's claim for refund and the Resolution dated October 20, 2004, denying the Motion for Reconsideration.

On April 20, 2004, petitioner received a copy of the questioned Decision, denying its claim for refund amounting to P80,556,859.63 representing unutilized creditable withholding taxes for the year 1999, on the ground of non-compliance with the requirements for the entitlement of refund/issuance of a tax credit certificate.

On May 5, 2004, a Motion for Reconsideration was filed by petitioner which was likewise denied in a Resolution dated October 20, 2004 and received by petitioner on October 26, 2004. Not satisfied with the ruling of the Division, petitioner elevated its case to the Court *En Banc*.

On November 9, 2004, a "Motion for Extension of Time to File Petition for Review" was filed by petitioner praying for an extension of fifteen (15) days or until November 25, 2004 within which to file its Petition for Review. The Court *En Banc* granted the motion in a resolution dated November 17, 2004.

On November 25, 2004, petitioner filed the instant Petition for Review raising the following errors:

A.

> THE FINDING THAT PETITIONER FAILED TO DECLARE THE INCOME UPON WHICH TAXES WERE WITHHELD AT SOURCE IS CONTRARY TO THE FACTS AND EVIDENCE ON RECORD.

B.

> PETITIONER DULY ESTABLISHED THE FACT OF WITHHOLDING IN COMPLIANCE WITH THE REQUIREMENTS UNDER LAW AND JURISPRUDENCE.

The Court *En Banc* finds the petition devoid of merit.

It is well established by law and existing jurisprudence that to be entitled to the refund/issuance of a tax credit certificate, the claimant must show compliance with the following requirements, to *wit*:

1. That the claim is filed with the Commissioner of Internal Revenue within the two (2) year period from the date of payment of the tax ***(Section 229, NIRC)***

2. It must not have opted to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years. ***(Section 76, NIRC)***

3. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

4. The fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. ***(Section 2.58.3 (B) Revenue Regulations No. 2-98; Citibank N.A. vs. Court of Appeals, Commissioner of Appeals, Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997; ACCRA Investments vs. Court of Appeals, 204 SCRA 957***)

On the first assigned error, petitioner's arguments center on the sale of its real properties to PDIC and Harbor Holdings, although classified as ordinary assets, were not made with the intention of making any gain, but made under special circumstances, in pursuance of the Rehabilitation Plan, with the intention of enabling petitioner (formerly Westmont Bank) to survive and continue operating as a banking institution. The assets transferred were sold at their book values, hence, no gain could have been made in the execution and implementation of the Rehabilitation Plan.

Petitioner further argues that the subject creditable withholding taxes withheld and paid by it to the respondent were not utilized as credit against any income taxes due for the years 1999, 2000 and 2001, as it suffered net losses in the amounts of P2,207,170,919.00, P943,754,696.00 and P1,235,682,639.00, for the years 1999, 2000 and 2001, respectively. Thus, petitioner maintains that any conclusion or finding of non-reporting of the creditable taxes withheld or any assumed or presumed gain in its income tax returns for the year 1999 should not deprive it of a right to be refunded of the unutilized creditable taxes withheld.

The non-declaration of the creditable taxes withheld in 1999 in the returns for the years 1999, 2000 and 2001 allegedly proves that petitioner did not utilize the creditable taxes against the income taxes from 1999 to 2001.

Petitioner's arguments cannot be sustained.

The Division has correctly ruled in the assailed Decision, and We quote:

> "After a thorough examination of the documents presented by the petitioner to support its claim, we found that the values reflected in the exhibits were bigger than the supposed book value of the real property sold. We note that the amount reflected in the documents in the sum of P4,894,264,221.09 represents the total asset transferred by the petitioner to PDIC at their book value. However, for verification purposes, we need to check whether the real estate sold to PDIC (subject of the claim) formed part of the total amount transferred. On this point, the petitioner failed. Neither the records nor the documents show that petitioner itemized the assets transferred to PDIC and so, we cannot ascertain whether or not the real property sold to PDIC was at its book value.
>
> In the same way, the basic creditable tax withheld on the sale of real property to Harbor amounts to P17,421,575.86, which, if grossed-up would result in the amount of P348,431,517.20 (P17,421,575.86/5%) as the value of the property sold. This would prove to be greater than the value of consideration in the amount of P228,558,599.92 as reflected from the Deed of Absolute Sale (Exhibit C). Hence, the impression is that petitioner realized gain on the sale of such property.
>
> Furthermore, petitioner failed to disclose the sale of the subject real properties in its 1999 annual income tax return under Schedule 1 Gain/Loss From Sales/Exchange of Real Properties of the Annual Information Form (Exhibit G). This may possibly have served as an alternative way of proving that the real properties sold to PDIC and Harbor were at their book values.
>
> Time and again this court has held that the income upon which the taxes were withheld at source should be included as part of the income declared in the income tax return of the recipient **(CCT Constructors Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5266, March 23, 1999)**. Failure to prove that such income was included as part of the income declared in the income tax return is fatal to one's claim for tax refund.
>
> xxx xxx xxx"

Furthermore, the Division aptly explained in the assailed Resolution, thus:

"Concomitant with the petitioner's obligation to indicate any gain or income from the sale of properties is its responsibility to indicate and disclose in its Annual Income Tax Return all creditable taxes withheld at source pertaining to the sale. Petitioner's Annual Income Taxes Returns for the years 1999, 2000 and 2001 (Exhibits G, H and O respectively) contain no entries on lines 26C and 26D where the Creditable Tax Withheld for the first three quarters and fourth quarter, respectively, should have been entered. The creditable withholding taxes were paid on March 10, 2000, the tax payments should have been reflected in petitioner's Annual Income Tax Return for the year 1999 because the sale was consummated during that year. But as stated it was not so reflected in petitioner's 1999 income tax return which was filed on April 17, 2000.

On this particular point, the National Internal Revenue Code (NIRC) of 1997 provides:

> SEC. 58. Returns and Payment of Taxes Withheld at Source.-
>
> xxx xxx xxx
>
> (D) Income of Recipient. – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56. (Emphasis supplied)
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent
>
> SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or

> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, **the excess amount shown on its final adjustment return** may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.
>
> From the language used in the foregoing provision of the NIRC of 1997, the law makes it mandatory for all taxpayers to declare on their tax returns all matters affecting their tax liabilities to the state as well as their claims against the state, which may be in the nature of excess taxes paid directly by the taxpayer or withheld and remitted through the withholding tax system. Petitioner should have declared in its 1999 income tax return all creditable taxes withheld from the sales of real properties to PDIC and Harbor Holdings because the right to a refund or tax credit has to be established in a true and accurate income tax return. "(Underlining supplied)

Therefore, it is incumbent upon petitioner to declare in its 1999 income tax return all the creditable taxes withheld from the sale of real properties to PDIC and Harbor Holdings because the right to a refund or tax credit certificate has to be established in a true and accurate return. Failure to prove that the income upon which the taxes were withheld at source was included as part of the income tax return is fatal to petitioner's claim for tax refund.

As to the second assigned error, petitioner contends that it was not possible for it to submit the creditable withholding taxes withheld at source from PDIC because pursuant to Clause 16 of the Transfer Agreement, petitioner was the party contractually required to pay all the taxes and duties payable in connection with the agreement, the entry and performance thereof and the transfer of assets.

Likewise, petitioner was required to pay all taxes and charges pertaining to its sale of real properties to Harbor Holdings. Thus, PDIC and Harbor Holdings did not prepare any Certificate of Creditable Withholding Taxes Withheld at Source. Instead, petitioner prepared and filed the Withholding Tax Remittance Returns in relation to the sale of real properties.

Petitioner further claims that the Official Receipt issued by the Land Bank of the Philippines clearly shows that the amount of P66,292,047.97, representing withholding taxes and interest, was duly paid by petitioner. With regard to the withholding taxes relating to the Deed of Absolute Sale with Harbor Holdings, the BIR's Letter dated August 18, 2002 confirms that the withholding taxes and interest thereon for the transaction with Harbor Holdings were paid.

We do not agree. Petitioner's claim for refund was correctly denied. The third requirement was not complied with, petitioner having failed to disclose the sale of its real properties to PDIC and Harbor Holdings in the Annual Information attached to the 1999 Annual Income Tax Return.

A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim. ***(Commissioner vs. Tokyo Shipping Co., Ltd., et al., G.R. No. 68252, May 26, 1995; Davao Gulf Lumber Corporation vs. Commissioner of Internal***

Revenue, et al., G.R. No. 122161, February 1, 1999; Philex Mining Corporation vs. Commissioner of Internal Revenue, et al., G.R. No. 120324, April 21, 1999; Commissioner of Internal Revenue vs. S.C. Johnson and Sons, Inc., et al., G.R. No. 127105, June 25, 1999) This is a settled rule in this jurisdiction.

For all the foregoing, petitioner's assigned errors all fail in the light of jurisprudence and law.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on April 13, 2004 and Resolution dated October 20, 2004, the instant Petition for Review is hereby **DENIED** and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Resolution has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice