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SECOND DIVISION

[G.R. No. 157264, January 31, 2008]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner, the Philippine Long Distance Telephone Company (PLDT), claiming that it terminated in 1995 the employment of several rank-and-file, supervisory, and executive employees due to redundancy; that in compliance with labor law requirements, it paid those separated employees separation pay and other benefits; and that as employer and withholding agent, it deducted from the separation pay withholding taxes in the total amount of P23,707,909.20 which it remitted to the Bureau of Internal Revenue (BIR), filed on November 20, 1997 with the BIR a claim for tax credit or refund of the P23,707,909.20, invoking Section 28(b)(7)(B) of the 1977 National Internal Revenue Code[1] which excluded from gross income

> [a]ny amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee.[2] (Underscoring supplied)

As the BIR took no action on its claim, PLDT filed a claim for judicial refund before the Court of Tax Appeals (CTA).

In its Answer,[3] respondent, the Commissioner of Internal Revenue, contended that PLDT failed to show proof of payment of separation pay and remittance of the alleged withheld taxes.[4]

PLDT later manifested on March 19, 1998 that it was reducing its claim to P16,439,777.61 because a number of the separated employees opted to file their respective claims for

refund of taxes erroneously withheld from their separation pay.[5]

PLDT thereafter retained Sycip Gorres Velayo and Company (SGV) to conduct a special audit examination of various receipts, invoices and other long accounts, and moved to avail of the procedure laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, allowing the presentation of a certification of an independent certified public accountant in lieu of voluminous documents.[6] The CTA thereupon appointed Amelia Cabal (Cabal) of SGV as Commissioner of the court.[7] Cabal's audit report, which formed part of PLDT's evidence,[8] adjusted PLDT's claim to P6,679,167.72.[9]

By Decision[10] of July 25, 2000, the CTA denied PLDT's claim on the ground that it "failed to sufficiently prove that the terminated employees received separation pay and that taxes were withheld therefrom and remitted to the BIR."[11]

PLDT filed a Motion for New Trial/Reconsideration, praying for an opportunity to present the receipts and quitclaims executed by the employees and prove that they received their separation pay.[12] Justifying its motion, PLDT alleged that

> x x x [t]hese Receipts and Quitclaims could not be presented during the course of the trial despite diligent efforts, the files having been misplaced and were only recently found. Through excusable mistake or inadvertence, undersigned counsel relied on the audit of SGV & Co. of the voluminous cash salary vouchers, and was thus not made wary of the fact that the cash salary vouchers for the rank and file employees do not have acknowledgement receipts, unlike the cash salary vouchers for the supervisory and executive employees. If admitted in evidence, these Receipts and Quitclaims, together with the cash salary vouchers, will prove that the rank and file employees received their separation pay from petitioner.[13] (Underscoring supplied)

The CTA denied PLDT's motion.[14]

PLDT thus filed a Petition for Review[15] before the Court of Appeals which, by Decision[16] of February 11, 2002, dismissed the same. PLDT's Motion for Reconsideration[17] having been denied,[18] it filed the present Petition for Review on Certiorari,[19] faulting the appellate court to have committed grave abuse of discretion

A.

. . . WHEN IT HELD THAT PROOF OF PAYMENT OF SEPARATION PAY TO THE EMPLOYEES IS REQUIRED IN ORDER TO AVAIL OF REFUND OF TAXES ERRONEOUSLY PAID TO THE BUREAU OF INTERNAL REVENUE.

B.

. . . WHEN IT HELD THAT PETITIONER FAILED TO ESTABLISH THAT PETITIONER'S EMPLOYEES RECEIVED THEIR SEPARATION PAY.

C.

. . . IN DISREGARDING THE CERTIFICA-TION/REPORT OF SGV & CO., WHICH CERTIFIED THAT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF P6,679,167.72.

D.

. . . IN NOT ORDERING A NEW TRIAL TO ALLOW PETITIONER TO PRESENT ADDITIONAL EVIDENCE IN SUPPORT THEREOF.[20]

PLDT argues against the need for proof that the employees received their separation pay and proffers the issue in the case in this wise:

> It is not essential to prove that the separation pay benefits were actually received by the terminated employees. This issue is not for the CTA, nor the Court of Appeals to resolve, but is a matter that falls within the competence and exclusive jurisdiction of the Department of Labor and Employment and/or the National Labor Relations Commission. x x x
>
> Proving, or submitting evidence to prove, receipt of separation pay would have been material, relevant and necessary if its deductibility as a business expense has been put in issue. But this has never been an issue in the instant case. The issue is whether or not the withholding taxes, which Petitioner remitted to the BIR, should be refunded for having been erroneously withheld and paid to the latter.
>
> For as long as there is no legal basis for the payment of taxes to the BIR, the taxpayer is entitled to claim a refund therefore. **Hence, any taxes withheld from separation benefits and paid to the BIR constitute erroneous payment of taxes and should therefore, be refunded/credited to the taxpayer/withholding agent, regardless of whether or not separation pay**

> **was actually paid to the concerned employees.**[21] (Emphasis in the original; underscoring supplied)

PLDT's position does not lie. Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the *taxpayer bears the burden of establishing the factual basis of his claim for a refund.*[22]

Under the earlier quoted portion of Section 28 (b)(7)(B) of the National Internal Revenue Code of 1977 (now Section 32(B)6(b) of the National Internal Revenue Code of 1997), it is incumbent on PLDT as a claimant for refund on behalf of each of the separated employees to show that each employee did

> x x x reflect in his or its own return the income upon which any creditable tax is required to be withheld at the source. Only when there is an excess of the amount of tax so withheld over the tax due on the payee's return can a refund become possible.
>
> A taxpayer must thus do two things to be able to successfully make a claim for the tax refund: (a) declare the income payments it received as part of its gross income and (b) establish the fact of withholding. On this score, the relevant revenue regulation provides as follows:
>
> > "Section 10. *Claims for tax credit or refund.* – Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."[23] (Underscoring supplied)

In fine, PLDT must prove that the employees received the income payments as part of gross income and the fact of withholding.

The CTA found that PLDT failed to establish that the redundant employees actually received separation pay and that it withheld taxes therefrom and remitted the same to the BIR, thus:

> With respect to the redundant rank and file employees' final payment/terminal pay x x x, the cash salary vouchers relative thereto have **no payment acknowledgement receipts.** Inasmuch as these cash vouchers were not signed by the respective employees to prove actual receipt of payment, the same

merely serves as proofs of authorization for payment and not actual payment by the Petitioner of the redundant rank and file employees' separation pay and other benefits. In other words, Petitioner failed to prove that the rank and file employees were actually paid separation pay and other benefits.

To establish that the withholding taxes deducted from the redundant employees' separation pay/other benefits were actually remitted to the BIR, therein petitioner submitted the following:

a) Monthly Remittance Return of Income Taxes Withheld for December 1995	Exhibit D
b) Revised SGV & Co. Certification	E to E-3-d
c) Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1995	E-6
d) Summary of Income Taxes Withheld for the calendar year ended December 31, 1995	E-6-a
e) Summary of Gross Compensation and Tax Withheld	E-6-b to E-6-e

However, it cannot be determined from the above documents whether or not Petitioner actually remitted the total income taxes withheld from the redundant employees' taxable compensation (inclusive of the separation pay/other benefits) for the year 1995. **The amounts of total taxes withheld for each redundant employees (Exhs. E-4, E-5, E-7, inclusive) cannot be verified against the "Summary of Gross Compensation and Tax Withheld for 1995" (Exhs. E-6-b to E-6-e, inclusive) due to the fact that this summary enumerates the amounts of income taxes withheld from Petitioner's employees on per district/area basis.** The only schedule (with names, corresponding gross compensation, and withholding taxes) attached to the

> summary was for the withholding taxes on service terminal pay (Exh. E-6-e). However, the names listed thereon were not among the names of the redundant separated employees being claimed by petitioner.
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> x x x x
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> It is worthy to note that Respondent presented a witness in the person of Atty. Rodolfo L. Salazar, Chief of the BIR Appellate Division, who testified that a portion of the Petitioner's original claim for refund of P23,706,908.20 had already been granted. He also testified that out of 769 claimants, who opted to file directly with the BIR, 766 had been processed and granted. In fact, x x x three claims were not processed because the concerned taxpayer failed to submit the income tax returns and withholding tax certificates. Considering that no documentary evidence was presented to bolster said testimony, **We have no means of counter checking whether the 766 alleged to have been already granted by the Respondent pertained to the P16,439,777.61 claim for refund withdrawn by the Petitioner from the instant petition or to the remaining balance of P6,679,167.72 which is the subject of this claim**.[24] (Emphasis and underscoring supplied)

The appellate court affirmed the foregoing findings of the CTA. A*propos is this Court's ruling in Far East Bank and Trust Company v. Court of Appeals*:[25]

> The findings of fact of the CTA, a special court exercising particular expertise on the subject of tax, are generally regarded as final, binding, and conclusive upon this Court, especially if these are substantially similar to the findings of the C[ourt of] A[ppeals] which is normally the final arbiter of questions of fact.[26] (Underscoring supplied)

While SGV certified that it had "been able to trace the remittance of the withheld taxes summarized in the C[ash] S[alary] V[ouchers] to the Monthly Remittance Return of Income Taxes Withheld for the appropriate period covered by the final payment made to the concerned executives, supervisors, and rank and file staff members of PLDT,"[27] the same cannot be appreciated in PLDT's favor as the courts cannot verify such claim. While the records of the case contain the Alphabetical List of Employee from Whom Taxes Were Withheld for the year 1995 and the Monthly Remittance Returns of Income Taxes Withheld for December 1995, the documents from which SGV "traced" the former to the latter have not been presented. Failure to present these documents is fatal to PLDT's case. For the relevant portions of CTA Circular 1-95 instruct:

> 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present: (a) a

> Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices x x x
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> 2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. **It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court** in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise the originals of the voluminous receipts, invoices and accounts must be ready for verification and comparison in case of doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence. (Emphasis and underscoring supplied)

Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,[28] citing *Commissioner of Internal Revenue v. Manila Mining Corporation*[29] explains the need for the promulgation of the immediately-cited CTA Circular and its effect:

> x x x The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It **does not relieve respondent of its imperative task** of *premarking* photocopies of sales receipts and invoices and submitting the same to the court after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, **the court cannot verify the authenticity and veracity of the independent auditor's conclusions.** (Italics in the original; Emphasis and underscoring supplied).[30]

On the denial of PLDT's motion for new trial: new trial may be granted on either of these grounds:

> a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has

probably been impaired in his rights; or

b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.[31]

Newly discovered evidence as a basis of a motion for new trial should be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.[32] And the grant or denial of a new trial is, generally speaking, addressed to the sound discretion of the court which cannot be interfered with unless a clear abuse thereof is shown.[33] PLDT has not shown any such abuse, however.

The affirmance by the appellate court of the CTA's denial of PLDT's motion for new trial on the ground of "newly discovered evidence," *viz*:

x x x x

The petitioner appended to its **"Motion for New Trial"**, etc. , unnotarized copies of **"Receipts, Release and Quitclaim"** bearing the signatures purportedly of those employees for whom the Petitioner filed the "**Petition**" before the CTA, dated December 28, 1995 x x x[.][34]

x x x x

Although the Rules require the appendage, by the Petitioner, of the **"Affidavits of Witnesses"** it intends to present in a new trial, the Petitioner failed to append to its **"Motion for New Trial"** any affidavits of said witnesses. The "Receipts, Releases, and Quitclaims" appended to the Petition are not authenticated. Indeed, the said deeds were not notarized, despite their having been signed, allegedly by the employees, as early as December 28, 1995, or approximately two (2) years before the Petitioner filed the Petition before the CTA. It behooved the Petitioner to have appended the Affidavits of the separated employees to authenticate the **"Receipts, Releases and Quitclaims"** purportedly executed by them, respectively. The petitioner did not.

The Petitioner wanted the CTA to believe that the employees executed the aforesaid **"Receipts, Releases and Quitclaims"** as early as December 28, 1995, and kept the same in its possession and custody. However, the petitioner divulged the existence of said Receipts, etc., only when it filed its **"Motion for New Trial**, etc." on August 18, 2000, or an ***interregnum*** of almost five (5)

> years. None of the responsible officers of the Petitioner, especially the custodian of said Receipts, etc., executed an "**Affidavit**" explaining why the same (a) were not notarized on or about December 28, 1995; (b) whether the said deeds were turned over to its counsel when it filed the Petition at bench; (c) why it failed to present the said Receipts to the SGV & Co., while the latter was conducting its examination and/or audit of the records of the Petitioner. It is incredible that, if it is true, as claimed by Petitioner, the employees, indeed, signed the said Receipts on December 28, 1995, the Petitioner, one of the biggest corporations in the Philippines and laden with competent executives/officers/employees, did not bother having the same notarized on or about December 28, 1995. For sure, when the Petitioner endorsed the preparation and filing of the Petition to its counsel, it should have collated all the documents necessary to support its Petition and submit the same to its counsel. If the Petitioner did, its counsel has not explained why it failed to present the same before the Commissioner and/or adduce the same in evidence during the hearing of the Petition on its merits with the CTA. We are convinced that the said Receipts, etc. were antedated and executed only after the CTA rendered its Decision and only in anticipation of the **"Motion for New Trial, etc."** filed by the Petitioner.[35] (Emphasis and underscoring in the original),

is thus in order.

Finally, on PLDT's plea for a liberal application of the rules of procedure,[36] *Commissioner of Internal Revenue v. A. Soriano Corporation*[37] furnishes a *caveat* on the matter:

> Perhaps realizing that under the Rules the said report cannot be admitted as newly discovered evidence, the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus,
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> > "To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence. Rule 13, Section 5 of the Rules of the Court of Tax

> Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to a considerable extent, the stability of judicial decisions."

> We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[38] (Underscoring supplied)

At all events, the alleged "newly discovered evidence" that PLDT seeks to offer does not suffice to establish its claim for refund, as it would still have to comply with Revenue Regulation 6-85 by proving that the redundant employees, on whose behalf it filed the claim for refund, declared the separation pay received as part of their gross income. Furthermore, the same Revenue Regulation requires that "the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."

WHEREFORE, the petition is **DENIED**.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

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[1] Presidential Decree No. 1158 as amended, also known as the National Internal Revenue Code of 1977.

[2] The same provision has been incorporated in Section 32(B)(6)(b) of the National Internal Revenue Code of 1997.

[3] CTA records, pp. 40-42.

[4] Id. at 41.

[5] Id. at 47.

[6] Id. at 92-94; TSN, September 1, 1998, pp. 4-5.

[7] Id. at 5-6.

[8] CTA records, pp. 113-120, 147-150, 159-160.

[9] Id. at 160, 203.

[10] Penned by Court of Tax Appeals Presiding Judge Ernesto D. Acosta, with the concurrence of Associate Judges Ramon O. de Veyra and Amancio Q. Saga. Id. at 221-230.

[11] Id. at 226.

[12] Id. at 231 (second of two consecutive pages both numbered "231")-241.

[13] Id. at 232.

[14] Id. at 345-348.

[15] CA *rollo*, pp. 11-32.

[16] Penned by then-Court of Appeals Associate Justice Romeo Callejo, Sr., with the concurrences of Associate Justices Remedios Salazar-Fernando and Perlita J. Tria Tirona. Id. at 623-650.

[17] Id. at 653-659.

[18] Id. at 707-708.

[19] *Rollo*, pp. 10-43.

[20] Id. at 16.

[21] Id. at 18-19.

[22] *Vide Far East Bank and Trust Company v. Court of Appeals,* G.R. No. 129130, December 9, 2005, 477 SCRA 49, 57-58.

[23] Id. at 54, citing Revenue Regulation 6-85.

[24] CTA records, p. 229.

[25] *Supra* note 22 at 54, *citing Revenue Regulation* 6-85.

[26] Id. at 52.

[27] CTA records, p. 122.

[28] G.R. No. 145526, March 16, 2007, 518 SCRA 425.

[29] G.R. No. 153204, August 31, 2005, 468 SCRA 571.

[30] *Supra* note 28 at 432.

[31] RULES OF COURT, Rule 37, Section 1.

[32] *Vide* RULES OF COURT, Rule 37, Section 2.

[33] T*umang v. Court of Appeals*, G.R. No. 82072, April 17, 1989, 172 SCRA 328, 335 (citation omitted).

[34] CA *rollo*, p. 647.

[35] Id. at 649-unnumbered page between pp. 649 and 650.

[36] *Rollo*, pp. 33-34.

[37] G.R. No. 113703, January 31, 1997, 267 SCRA 313.

[38] Id. at 319.