

## FIRST DIVISION

[ G.R NO. 129130, December 09, 2005 ]

**FAR EAST BANK AND TRUST COMPANY, PETITIONER, VS.  
COURT OF APPEALS, COURT OF TAX APPEALS AND  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

This is a Petition for Review on Certiorari assailing the decision of the Court of Appeals (CA) dated May 7, 1997 in CA-G.R. SP No. 41666.

The CA affirmed *in toto* the decision of the Court of Tax Appeals (CTA) dated January 24, 1996 and its resolution of July 31, 1996, dismissing petitioner Far East Bank and Trust Company's claim for refund of excess creditable withholding taxes in the aggregate amount of Seven Hundred Fifty-Five Thousand Seven Hundred and Fifteen Pesos (P755,715) allegedly paid and remitted to the Bureau of Internal Revenue (BIR) sometime in 1990 and 1991.

The antecedent facts are as follows:

Petitioner is a domestic banking corporation duly organized and existing under and by virtue of Philippine laws. In the early part of 1992, the Cavite Development Bank [CDB], also a domestic banking corporation, was merged with Petitioner with the latter as its surviving entity [under] the merger. Petitioner being the surviving entity[it] acquired all [the] assets of CDB.

During the period from 1990 to 1991, CDB sold some acquired assets in the course of which it allegedly withheld the creditable tax from the sales proceeds which amounted to P755,715.00.

In said years, CDB filed income tax returns which reflected that CDB incurred negative taxable income or losses for both years. Since there was no tax against which to credit or offset the taxes withheld by CDB, the result was that CDB, according to petitioner, had excess creditable withholding tax.

Thus, petitioner, being the surviving entity of the merger, filed this Petition for

Review after its administrative claim for refund was not acted upon.<sup>[1]</sup>

In denying petitioner's claim, the CA held that the evidence presented by petitioner consisting of (1) confirmation receipts, payment orders, and official receipts issued by the Central Bank and the BIR with CDB as the payor;<sup>[2]</sup> (2) Income Tax Returns for 1990 and 1991 with attached financial statements filed by petitioner with the BIR;<sup>[3]</sup> and, (3) a list prepared by the Accounting Department of petitioner purportedly showing the CDB schedule of creditable withholding tax applied for refund for 1990 and 1991,<sup>[4]</sup> all failed to clearly establish that the taxes arising from the sale of its acquired assets sometime in 1990 and 1991 were properly withheld and remitted to the BIR. The CA likewise ruled that it was incumbent upon petitioner to present BIR Form No. 1743.1 as required under Revenue Regulation 6-85 to conclusively prove its right to the refund. It held that petitioner's failure to do so was fatal to its cause.

Hence, this Petition.

Petitioner anchors its arguments on the following grounds:

1. THE DECISION OF MAY 7, 1997 WHEREBY RESPONDENT CA DISMISSED PETITIONER'S APPEAL, AND RESPONDENT CTA'S DECISION DATED JANUARY 24, 1996 AND RESOLUTION OF JULY 31, 1996, ARE NOT BASED ON THE FACTS AND THE LAW.
2. PETITIONER HAS ADDUCED EVIDENCE *A QUO* WHICH SUFFICIENTLY AND SUBSTANTIALLY ESTABLISH[ES] THE FACT THAT THE CREDITABLE WITHHOLDING TAX ON THE SALE OF ACQUIRED ASSETS WAS WITHHELD AND THEN REMITTED TO THE BUREAU OF INTERNAL REVENUE; AND,
3. THE DISMISSAL OF THE CLAIM FOR REFUND BEFORE RESPONDENT CTA ARISES FROM AN UNDULY STRICT APPLICATION OF THE REGULATIONS WHICH IS NOT WARRANTED IN VIEW OF THE CLEAR PROOFS ADDUCED BY PETITIONER WHICH ESTABLISH THE BASIS FOR THE RELIEFS SOUGHT.<sup>[5]</sup>

Petitioner contends that the confirmation receipts presented by it constitute "competent and irrefutable proof of the fact that taxes were withheld and remitted to the BIR."<sup>[6]</sup> It is admitted that the taxes reflected on the confirmation receipts as well as on the payment orders and official receipts issued by the BIR were withheld by CDB. Petitioner maintains that these pertained to the proceeds of the sale of its acquired assets in 1990 and 1991. According to petitioner, CDB took the initiative of paying the withholding tax accruing thereon notwithstanding the fact that it was the recipient of the income, to ensure that the correct taxes were remitted to the BIR. Petitioner further argues that the list prepared by its

Accounting Department identifying the persons to whom the various sales were made and indicating the amount of taxes withheld for each transaction should have been given more weight by the court *a quo* as this document, when taken with the tax withholding forms, indubitably establishes the fact of withholding and the basis for the claims for refund.<sup>[7]</sup> Considering, therefore, that petitioner had adequately established by other evidence the basis for the grant of the claim for tax refund, petitioner asserts that its failure to submit BIR Form No. 1743.1 is not fatal to its cause.

The crucial issue in this case turns on a question of fact, that is, whether petitioner adduced sufficient evidence to prove its entitlement to a refund.

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<sup>[8]</sup> upon this Court, especially if these are substantially similar to the findings of the CA which is normally the final arbiter of questions of fact.<sup>[9]</sup> The findings shall not be reviewed nor disturbed on appeal<sup>[10]</sup> unless a party can show that these are not supported by evidence,<sup>[11]</sup> or when the judgment is premised on a misapprehension of facts, or when the lower courts failed to notice certain relevant facts which if considered would justify a different conclusion.<sup>[12]</sup>

Petitioner has not sufficiently presented a case for the application of an exception from the rule.

Firstly, the CA cannot be faulted for not lending credence to petitioner's contention that it withheld, **for its own account**, the creditable withholding taxes on the sale of its acquired assets. In our withholding tax system, possession of the amount that is used to settle the tax liability is acquired by the payor as the withholding agent of the government.<sup>[13]</sup> For this reason, the Tax Code imposes, among others, certain obligations upon the withholding agent to monitor its compliance with this duty. These include the filing of the quarterly withholding tax returns,<sup>[14]</sup> the submission to the payee, in respect of his or its receipts during the calendar quarter or year, of 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,<sup>[15]</sup> and the filing with the BIR of a reconciliation statement of quarterly payments and a list of payees and income payments.<sup>[16]</sup> Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. This is significant in that a taxpayer cannot be compelled to answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. In addition, the former could not be deemed to have evaded the tax had the withholding agent performed its duty.<sup>[17]</sup>

On the other hand, it is incumbent upon the payee to 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.<sup>[18]</sup> 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 payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.<sup>[19]</sup>

As mentioned, petitioner relies heavily on the confirmation receipts with the corresponding official receipts and payment orders to support its case. Standing alone, however, these documents only establish that CDB withheld certain amounts in 1990 and 1991. It does not follow that the payments reflected in the confirmation receipts relate to the creditable withholding taxes arising from the sale of the acquired properties. The claim that CDB had excess creditable withholding taxes can only be upheld if it were clearly and positively shown that the amounts on the various confirmation receipts were the amounts withheld by virtue of the sale of the acquired assets. On this point, the CA correctly pronounced:

The confirmation receipts alone, by themselves, will not suffice to prove that the taxes reflected in the income tax returns are the same taxes withheld from CDB's income payments from the sale of its acquired assets. This is because a cursory examination of the said Confirmation Receipts, Payment Orders and Official Receipts will show that what are reflected therein are merely the names of the payors and the amount of tax. The nature of the tax paid, or at the very least, the income payments from which the taxes paid were withheld are not reflected therein. If these are the only entries that are found on these proffered documents, We cannot begrudge the Respondent Court from nurturing veritable doubts on the nature and identity of the taxes withheld, when it declared, in part, in its Decision (*Annex "A" of the Petition*) that, 'It can not well be said that the amounts paid and remitted to the BIR were for CDB's account and not for the other possible payees of withholding taxes which CDB may also be liable to remit as a withholding agent x x x .<sup>[20]</sup>

Petitioner, apparently aware of the foregoing deficiency, offered into evidence a CDB Schedule of Creditable Withholding Tax for the period 1990 to 1991<sup>[21]</sup> prepared by petitioner's representative to show that the taxes CDB withheld did, indeed, pertain to the taxes accruing on the sale of the acquired assets. The CA, however, found the same to be "self-serving and unverifiable" and therefore "barren of evidentiary weight."<sup>[22]</sup> We accord

this finding on an issue of fact the highest respect and we will not set it aside lightly.

It bears emphasis that questions on whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. This is true regardless of whether the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by the adverse party, may be said to be strong, clear and convincing. Whether certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight—all these are issues of fact. Questions like these are not reviewable by us. As a rule, we confine our review of cases decided by the CA only to questions of law raised in the petition and therein distinctly set forth.<sup>[23]</sup> We note that without the CDB Schedule, no evidence links the Confirmation Receipts, Payment Orders and Official Receipts to the taxes allegedly withheld by CDB on the sale of the acquired assets.

As to the annual income tax returns for 1990 and 1991 <sup>[24]</sup> presented by petitioner, we must stress that the mere admission into the records of these returns does not automatically make their contents or entries undisputed and binding facts. Mere allegations by petitioner of the figures in its returns are not a sufficient proof of the amount of its refund entitlement. They do not even constitute evidence adverse to respondent, against whom these are being presented.<sup>[25]</sup>

Furthermore, we note that in the proceedings below, respondent Commissioner of Internal Revenue (CIR) raised the fact that there was a discrepancy in the excess creditable withholding tax reflected in the returns with the amounts sought to be refunded by petitioner. Whereas the 1990 and 1991 Income Tax Returns indicated that CDB had excess creditable withholding tax in the amounts of P535,310 and P357,511, respectively, the amounts claimed by petitioner as indicated in the CDB Schedule were P512,940.50 for 1990 and P242,774.50 for 1991.<sup>[26]</sup> The records are bereft of any explanation for such discrepancy. This further undermines petitioner's contentions, and its reliance on the CDB Schedule.

Petitioner also asserts that the confusion or difficulty in the implementation of Revenue Memorandum Circular 7-90<sup>[27]</sup> was the reason why CDB took upon itself the task of withholding the taxes arising from the sale, to ensure accuracy. Assuming this were true, CDB should have, nevertheless, accomplished the necessary returns to clearly identify the nature of the payments made and file the same with the BIR. Section 2 of the circular clearly provides that the amount of withholding tax paid by a corporation to the BIR during the quarter on sales or exchanges of property and which are creditable against the corporation's tax liability are evidenced by Confirmation/Official Receipts and covered by BIR Form Nos. 1743W and 1743-B. On the other hand, Revenue Regulation 6-85 states that BIR Form No. 1743.1 establishes the fact of withholding. Since no competent

evidence was adduced by petitioner, the failure to offer these returns as evidence of the amount of petitioner's entitlement during the trial phase of this case is fatal to its cause. For its negligence, petitioner "cannot be allowed to seek refuge in a liberal application of the [r]ules."<sup>[28]</sup> The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances.<sup>[29]</sup>

We must emphasize that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority.<sup>[30]</sup> In the event, petitioner has not met its burden of proof in establishing the factual basis for its claim for refund and we find no reason to disturb the ruling of the lower courts.

**WHEREFORE**, the petition is **DENIED** and the Decision of the Court of Appeals dated May 7, 1997 in CA-G.R. SP No. 41666 is **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

*Davide, C.J., (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.*

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<sup>[1]</sup> CA Decision, Rollo, p. 9.

<sup>[2]</sup> Exhibit I, Records.

<sup>[3]</sup> Exhibits F and G, Records.

<sup>[4]</sup> Exhibit H, Records.

<sup>[5]</sup> Rollo, pp. 25-26.

<sup>[6]</sup> *Id.* at p. 28.

<sup>[7]</sup> Rollo, pp. 31-32.

<sup>[8]</sup> *Sea-land Service, Inc. v. CA*, G.R. No. 122605, April 30, 2001, 357 SCRA 441.

<sup>[9]</sup> *CIR v. CA*, G.R. No. 108576, January 20, 1999, 301 SCRA 152, citing *Binalay v. Manalo*, G.R. No. 92161, March 18, 1991, 195 SCRA 374.

<sup>[10]</sup> *Republic v. IAC*, G.R. No. 69344, April 26, 1991, 196 SCRA 335, 340.

- [11] *CIR v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546, (1999).
- [12] *BPI-Family Savings Bank, Inc. v. CA*, G.R. No. 122480, April 12, 2000, 330 SCRA 507.
- [13] *CIR v. Solidbank*, GR No. 148191, November 25 ,2003, 416 SCRA 436.
- [14] Presidential Decree 1158 (1977), Section 51 (a).
- [15] *Id.* Section 51 (c).
- [16] *Id.* Section 51 (d).
- [17] *CIR v. CA*, G.R. No. 108576, January 20, 1999, 301 SCRA 152.
- [18] *Calamba Steel Center, Inc. v. CIR*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.
- [19] Revenue Regulation 6-85 (1985).
- [20] CA Decision, Rollo, p. 14.
- [21] Exhibit H, Records.
- [22] CA Decision, Rollo, p. 15.
- [23] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630.
- [24] Exhibits F and G, Records.
- [25] *Calamba Steel Center Inc. v. CIR*, supra note 18, quoting *Lagasca v. De Vera*, 79 Phil. 376, 381 (1947), and *Sambrano v. Red Line Transportation Co., Inc.*, 68 Phil. 652, 655 (1939).
- [26] Records, p. 91.
- [27] Revenue Memorandum Circular 7-90 was issued by the Commissioner of Internal Revenue on February 1, 1990. The regulation sought to clarify various revenue regulations which added certain sales and exchanges of real properties as income payments subject to the expanded withholding tax under Revenue Regulation 6-85. All other provisions of the latter, such as the procedure for claims for tax credit or refund, remained in force.

[28] *CIR v. A. Soriano Corp.*, 334 Phil. 965, 972 (1997).

[29] *Norris v. Hon. Parentela Jr.*, 446 Phil. 462, 472 (2003).

[30] *Paseo Realty & Development Corporation v. CA*, G.R. No. 119286, October 13, 2004, 440 SCRA 235.