522 Phil. 434

THIRD DIVISION

[G.R. NO. 138919, May 02, 2006]

FAR EAST BANK AND TRUST COMPANY AS TRUSTEE OF VARIOUS RETIREMENT PRESENT: FUNDS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The present petition evokes some degree of natural sympathy for the petitioner, as it seeks the refund of taxes wrongfully paid on the income earned by several retirement funds of private employees held by petitioner in their behalf. The steps undertaken by petitioner to seek the refund were woefully error-laden, yet their claims still received due solicitation from this Court. But in the end, the errors committed are just too multiple as well as consequential, and the claim for refund not sufficiently proven. Impulses may suggest that we reverse and grant, but logic and the law dictate that the Court affirm the assailed rulings of the Court of Appeals and the Court of Tax Appeals.

Before us is a Petition for Review on Certiorari filed by petitioner Far East Bank & Trust Company, assailing the Resolutions of the Court of Appeals Fifth Division dated 12 January 1999 and 3 June 1999.[1] The Resolution of 12 January 1999 dismissed outright, on procedural grounds, a petition for review filed by petitioner questioning a Decision of the Court of Tax Appeals dated 11 September 1998.[2]

While the petition before us primarily seeks the review of the procedural grounds on which the petition before the Court of Appeals was denied, it stems from a claim for refund lodged by petitioner against the Commissioner of Internal Revenue (CIR) on taxes on interest income withheld and paid to the CIR for the four (4) quarters of 1993, arising from investments derived from money market placements, bank deposits, deposit substitute instruments and government securities made by petitioner as the trustee of various retirement funds.

Petitioner is the trustee of various retirement plans established by several companies for its employees. As trustee of the retirement plans, petitioner was authorized to hold, manage, invest and reinvest the assets of these plans.[3] Petitioner utilized such authority to invest these retirement funds in various money market placements, bank deposits, deposit

substitute instruments and government securities. These investments necessarily earned interest income. Petitioner's claim for refund centers on the tax withheld by the various withholding agents, and paid to the CIR for the four (4) quarters of 1993, on the aforementioned interest income. It is alleged that the total final withholding tax on interest income paid for that year amounted to P6,049,971.83.[4]

On four dates, 12 May 1993, 16 August 1993, 31 January 1994, and 29 April 1994, petitioner filed its written claim for refund with the Bureau of Internal Revenue (BIR) for the first, second, third and fourth quarters of 1993, respectively. Petitioner cited this Court's "precedent setting" decision in *Commissioner of Internal Revenue v. Court of Appeals*,[5] promulgated on 23 March 1992, said case holding that employees' trusts are exempted by specific mandate of law from income taxation. Nonetheless, the claims for refund were denied.

By this time, petitioner already had a pending petition before the Court of Tax Appeals (CTA), docketed as CTA Case No. 4848, and apparently involving the same legal issue but a previous taxable period. Hoping to comply with the two (2)-year period within which to file an action for refund under Section 230 of the then Tax Code, petitioner filed a Motion to Admit Supplemental Petition[6] in CTA Case No. 4848 on 28 April 1995, seeking to include in that case the tax refund claimed for the year 1993. However, the CTA denied the admission of the Supplemental Petition in a Resolution dated 25 August 1995.[7] The CTA reasoned then that CTA Case No. 4848 had already been pending for more than two and a half (2 1/2) years, and the admission of the supplemental petition, with a substantial enlargement of petitioner's original claim for refund, would further delay the proceedings, causing as it would, an effective change in the cause of action. Nonetheless, the CTA advised that petitioner could instead file a separate petition for review for the refund of the withholding taxes paid in 1993.[8]

Petitioner decided to follow the CTA's advice, and on 9 October 1995, it filed another petition for review with the CTA, docketed as CTA Case No. 5292, concerning its claim for refund for the year 1993. The CIR posed various defenses, among them, that the claim for refund had already prescribed.[9] Trial ensued.

On 11 September 1998, the CTA promulgated its decision in CTA Case No. 5292, denying the claim for refund for the year 1993. While the CTA noted that the income from employees' trust funds were exempt from income taxes, the claims for refund had already prescribed insofar as they covered the first, second and third quarters of 1993, as well as from the period of 1 October to 8 October 1993. The CTA so ruled considering that the petition before it was filed only on 9 October 1995, and thus, only those claims that arose after 9 October 1993 could be considered in light of the two (2)-year prescriptive period for the filing of a judicial claim for refund from the date of payment of the tax, as provided in Section 230 of the Tax Code.[10]

As to the claim for refund covering the period 9 October 1993 up to 31 December 1993, the CTA likewise ruled that such could not be granted, the evidence being insufficient to establish the fact "that the money or assets of the funds were indeed used or placed in money market placements, bank deposits, other deposit substitute instruments and government securities, more particularly treasury bills." The CTA noted that petitioner merely submitted as its evidence copies of the following documents: the list of the various funds; the schedule of taxes withheld on a quarterly basis in 1993; the written claims for refund; the BIR Rulings on the various Retirement Plans; the trust agreements of the various retirement plans; and certifications of the Accounting Department of petitioner, Citibank, and the Bangko Sentral ng Pilipinas as to the taxes that they respectively withheld.[11]

The CTA faulted petitioner for failing to submit such necessary documentary proof of transactions, such as confirmation receipts and purchase orders that would ordinarily show the fact of purchase of treasury bills or money market placements by the various funds, together with their individual bank account numbers. These various documents which petitioner failed to submit were characterized as "the best evidence on the participation of the funds, and without them, there is no way for this Court to verify the actual involvement of the funds in the alleged investment in treasury bills and money market placements."[12] The CTA also held as insufficient for such purposes the certifications issued by Citibank, BSP, and petitioner's own Accounting Department, considering that the aggregate amount of the final withholding taxes to which they attest totalled more than P40,000,000.00, in comparison to the present claims of only around P6,000,000.00. The CTA thus concluded that such certifications included non-tax exempt or otherwise taxable transactions, the sums of which were conglomerated with the amount that may have actually been refundable.

Petitioner filed a Motion for Reconsideration and/or New Trial, which the CTA denied in a Resolution dated 4 December 1998.[13] Petitioner then filed a Petition for Review under Rule 43 with the Court of Appeals. However, this petition was denied outright by the appellate court in its Resolution dated 12 January 1999. The Court of Appeals held that petitioner had failed to observe the requirement, under Section 2, Rule 42 of the 1997 Rules of Civil Procedure that the petition should be accompanied by other material portions of the record as would support the allegations of the petition. The Court of Appeals particularly mentioned the following documents omitted by the petitioner in its petition: the Supplemental Petition, the CTA Resolution denying the admission of the Supplemental Petition, the new Petition filed with the CTA, and the Motion for Reconsideration and/or New Trial.[14]

Petitioner moved for reconsideration of the adverse decision of the Court of Appeals, attaching to its motion the required certified copies of the cited documents. Nonetheless, the Court of Appeals denied the motion for reconsideration through a Resolution dated 3 June 1999, holding that the belated compliance did not cure the defect of the petition. Moreover, the Court of Appeals also noted that it had taken a "closer look at the petition" and on that basis concluded that the CTA Decision contained no reversible error.[15]

Hence, the present petition, which we deny.

Petitioner argues that it was error on the part of the Court of Appeals to have dismissed its petition "on a mere technicality."[16] Yet the dismissal engaged in by the Court of Appeals on procedural grounds is wholly sanctioned by the relevant provisions of the Rules of Court. Section 6 of Rule 43, 1997 Rules of Civil Procedure, then governing the procedure of appeals from decisions of the CTA to the Court of Appeals,[17] explicitly provides that the petition for review be accompanied by "certified true copies of such material portions of the record referred to [in the petition] and other supporting papers". Under Section 7, Rule 43, the failure to attach such documents which should accompany the petition is sufficient ground for the dismissal of the petition.

It should be remembered that it is only when the petition has been given due course, after a *prima facie* finding that the CTA had committed errors of fact or law that would warrant reversal[18], that the case record would be transmitted from the court of origin to the Court of Appeals.[19] Clearly, upon the filing of the petition, the appellate court would have no documentary basis to discern whether the required *prima facie* standard has been met except the petition itself and the documents that accompany it. While the submissions in the petition may refer to other documents in the record, or may even quote at length from those documents, the Court of Appeals would have no way to ascertain the veracity of the submissions unless the certified true copies of these documents are attached to the petition itself.

Thus, the requirement that certified true copies of such portions of the record referred to in the petition be attached is not a mere technicality that can be overlooked with ease, but an essential requisite for the determination of *prima facie* basis for giving due course to the petition. Thus, it does not constitute error in law when the Court of Appeals dismissed the petition on such ground. Moreover, while the court *a quo* is capacitated to give cognizance to the belated compliance attempted by petitioner, acquiescence to such belated compliance is a matter of sound discretion on the part of the lower court, and one not ordinarily disturbed by the Court.

Even assuming that the procedural errors may be overlooked, we still agree with the Court of Appeals in holding in the Resolution of 3 June 1999 that the CTA committed no reversible error in its assailed decision.

We hold, as the CTA did, that the exemption from income tax of income from employees' trusts still stands. The Court had first recognized such exemption in the aforementioned *CIR v. Court of Appeals*[20] case, arising as it did from the enactment of Republic Act No. 4917 which granted exemption from income tax to employees' trusts.[21] The same exemption was provided in Republic Act No. 8424, the Tax Reform Act of 1997, and may now be found under Section 60(B) of the present National Internal Revenue Code. Admittedly, such interest income of the petitioner for 1993 was not subject to income tax.

Still, petitioner did pay the income tax it was not liable for when it withheld such tax on interest income for the year 1993. Such taxes were erroneously assessed or collected, and thus, Section 230 of the National Internal Revenue Code then in effect comes into full application. The provision reads:

> SEC. 230. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (emphasis supplied)

The CTA noted that since the petition for review was only filed on 9 October 1995, petitioner could no longer claim the refund of such tax withheld for the period of January to 8 October 1995, the two (2)-year prescriptive period having elapsed. Petitioner submits that the two (2)-year prescriptive period should be reckoned from the date of its filing of the Supplemental Petition on 28 April 1995, not from the filing of its new petition for review after the Supplemental Petition was denied.[22] Even granting that this should be the case, such argument would still preclude the refund of taxes wrongfully paid from January to 27 April 1993, the two (2)-year prescriptive period for those taxes paid then having already become operative.

Yet could the two (2)-year prescriptive period for the refund of erroneously paid taxes be deemed tolled by the filing of the Supplemental Petition? Petitioner argues that Section 230 of the then Tax Code does not specify the form in which the judicial claim should be made. That may be so, but it does not follow that the two (2)-year period may be suspended by the filing of just any judicial claim with any court. For example, the prescriptive period to claim for the refund of corporate income tax paid by a Makati-based corporation cannot be suspended by the filing of a complaint with the Municipal Circuit Trial Court of Sorsogon. At the very least, such judicial claim should be filed with a court which would properly have jurisdiction over the action for the refund.

In this case, there is no doubt that the CTA has jurisdiction over actions seeking the refund of income taxes erroneously paid. But it should be borne in mind that petitioner initially

sought to bring its claim for refund for the taxes paid in 1993 through a supplemental petition in another case pending before the CTA, and not through an original action. The admission of supplemental pleadings, including supplemental complaints, does not arise as a matter of right on the petitioner, but remains in the sound discretion of the court, which is well within its right to deny the admission of the pleading. Section 6, Rule 10 of the 1997 Rules of Civil Procedure, governing supplemental pleadings, is clear that the court only "may" admit the supplemental pleading, and is thus not obliged to do so.

It is only upon the admission by the court of the supplemental complaint that it may be deem to augment the original complaint. Until such time, the court acquires no jurisdiction over such new claims as may be raised in the supplemental complaint. Assuming that the CTA erred in refusing to admit the Supplemental Petition, such action is now beyond the review of this Court, the order denying the same having long lapsed into finality, and it appearing that petitioner did not attempt to elevate such denial for judicial review with the proper appellate court.

We thus cannot treat the Supplemental Petition as having any judicial effect. It cannot even be deemed as having been filed, the CTA refusing to admit the same. Moreover, the CTA could not have acquired jurisdiction over the causes of action stated in the Supplemental Petition by virtue of the same pleading owing to that court's non-admission of that complaint. The CTA acquired jurisdiction over the claim for refund for taxes paid by petitioner in 1993 only upon the filing of the new Petition for Review on 9 October 1995.

Yet, let us assume again, this time, that the filing of the Supplemental Petition could have tolled the two (2)-year prescriptive period insofar as the 1993 taxes paid after 28 April 1993 were concerned. There may even be cause to entertain this assumption, considering that this two (2)-year prescriptive period is not jurisdictional and may be suspended under exceptional circumstances.[23] Yet a closer look at the case does not indicate the presence of such exceptional circumstances, but instead affirm that the petition is still bereft of merit.

The CTA evinced palpable discomfort over the sufficiency of the evidence presented by petitioner to establish its claim for refund. It noted as follows:

> As regards the third issue, this Court is convinced that the evidence of the petitioner for the remaining portion of the claim for the fourth quarter of 1993 is insufficient to establish the fact that the money or assets of the funds were indeed used or placed in money market placements, bank deposits, other deposit substitute instruments and government securities, more particularly treasury bills.
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> To prove its case, petitioner merely submitted copies of the following documents, namely:
>
> **Exhibit**

1. List of the various funds	A
2. Schedule of taxes withheld on a quarterly basis in 1993	B
3. Written claims for refund	C-C4 D-D4 E-E4 F-F4
4. BIR Rulings on the various Retirement Plans at bar	G-Y
5. Trust agreements of the various Retirement Plans	Z-RR
6. Certifications of the Accounting Department of petitioner, Citibank, and *Bangko Sentral ng Pilipinas* on the taxes they respectively withheld	SS-UU49, inclusive

> It is to be noted from the above listed exhibits that documentary proof of transactions, such as confirmation receipts and purchase orders which would ordinarily show the fact of purchase of treasury bills or money market placements by the various funds, together with their individual bank account numbers, were not submitted in evidence by the petitioner. They represent the best evidence on the participation of the funds and without them, there is no way for this Court to verify the actual involvement of the funds in the alleged investment in the treasury bills and money market placements.[24]

Clarifications are in order. The cited passage may seem to implicitly assume that only such income earned by the employees' trusts from money market placements, bank deposits, other deposit substitute instruments and government securities are exempted from income taxation. This is contrary to the provisions in Republic Act No. 4917, which then stood as the governing provision on income tax exemption of employees' trusts:

> SECTION 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by official and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be

> liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action; xxx

The tax exemption enjoyed by employees' trusts was absolute, irrespective of the nature of the tax. There was no need for the petitioner to particularly show that the tax withheld was derived from interest income from money market placements, bank deposits, other deposit substitute instruments and government securities, since the source of the interest income does not have any effect on the exemption enjoyed by employees' trusts.

What has to be established though, as a matter of evidence, is that the amount sought to be refunded to petitioner actually corresponds to the tax withheld on the interest income earned from the exempt employees' trusts. The need to be determinate on this point especially militates, considering that petitioner, in the ordinary course of its banking business, earns interest income not only from its investments of employees' trusts, but on a whole range of accounts which do not enjoy the same broad exemption as employees' trusts.

It clearly bothered the CTA that the submitted certifications from Citibank, the BSP, and petitioner's own Accounting Department attest only to the total amount of final withholding taxes remitted to the BIR. Evidently, the sum includes not only such taxes withheld from the interest income of the exempt employees' trusts, but also from other transactions between petitioner and the BSP or Citibank which are not similarly exempt from taxation. For these certifications to hold value, there is particular need for them to segregate such taxes withheld from the interest income of employees' trusts, and those withheld from other income sources. Otherwise, these certifications are ineffectual to establish the present claim for refund.

The weak evidentiary value of these certifications proved especially fatal, as no other documentary evidence was submitted to establish that the withholding agents actually withheld interest income earned from the employees' trusts administered by petitioner. The other evidence submitted by petitioner merely establishes the fact that it administered various named employees trusts, the particular trust agreements between petitioner and these trusts, its requests for refund from the BIR and their consequent denials. Petitioner did submit a schedule of taxes withheld on a quarterly basis for the year 1993, but this document was apparently prepared by petitioner itself, and its self-serving nature precludes from according it any authoritative value.

We agree with the CIR that petitioner should have instead submitted documentary proof of transactions, such as confirmation receipts and purchase orders, as the best evidence on the participation of the funds from these employees trusts. The appreciation of facts made by the CTA, which exercises particular expertise on the subject of tax, generally binds this Court.[25] It may not be so, as the CIR contends, that the proper purpose for presenting such documents is to establish that the funds were actually invested "in treasury bills and

money market placements", since the character of the investments does not detract from the fact that all income earned by the employees' trusts is exempt from taxation. Instead, these documents are vital insofar as they establish the extent of the investments made by petitioner from the employees' trusts, as distinguished from those made from other account sources, and correspondingly, the amount of taxes withheld from the interest income derived from these employees' trusts alone.

Petitioner argues that the testimony of its witnesses establishes that it would be next to impossible to single out the particular transactions involving exempt employees' trusts, in view of the manner of lumping all the data in the reporting procedures of the withholding agents, particularly concerning treasury bills. While that may be so, a necessary consequence of the special exemption enjoyed alone by employees' trusts would be a necessary segregation in the accounting of such income, interest or otherwise, earned from those trusts from that earned by the other clients of petitioner. The Court has no desire to impose unnecessarily pernickety documentary requirements in obtaining a valid tax refund. Yet it cannot be escaped that the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount that should be refunded. If the latter requisite cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due. Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.[26] The burden in proving the claim for refund necessarily falls on the taxpayer, and petitioner in this case failed to discharge the necessary burden of proof.

One argument remains. It can be dispensed with briefly. Petitioner argues that the CTA should have granted its motion for a new trial, which was premised on the claim that certain documents had been misplaced during the relocation of petitioner's headquarters, and were located only after the case was submitted for resolution.[27] Section 1, Rule 37 of the 1997 Rules of Civil Procedure does allow for a new trial on the ground that "newly discovered evidence, which [movant] could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result". However, as the CTA pointed out in its 4 December 1998 Resolution, the case was submitted for resolution with the CTA only in May of 1998, or more than two (2) years since the alleged transfer of headquarters by the petitioner. The CTA also noted that during that time, petitioner "made no visible attempt to retrieve the documents or at the very least, inform this Court of such problem".[28] These observations sufficiently rebut the claim that the alleged newly discovered evidence could not have been located with reasonable diligence.

It is tragic that the ultimate loss to be borne by the tardy claim for the refund would be not by the petitioner-bank, but the hundreds of private employees whose retirement funds were reposed in petitioner's trust. However, the damage was sustained due to multiple levels of incompetence on the part of the petitioner which this Court cannot simply give sanction to. Many of the so-called procedural hurdles could have been overlooked, even by this Court,

but in the end, the claim for tax refund was simply not proven with the particularity demanded of an action seeking to siphon off the nation's "lifeblood."

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio-Morales, and *Velasco, Jr., JJ.,* concur.

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[1] Both penned by then Associate Justice (now Presiding Justice) Ruben T. Reyes, concurred in by Associate Justices Salome A. Montoya and Eloy R. Bello, Jr.

[2] Decision penned by Associate Judge Amancio Q. Saga, concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Ramon O. De Veyra.

[3] See *rollo*, p. 19.

[4] Petitioner alleges before us that the retirement plans from which it invested funds in 1993 were the Filipinas Synthetic Fiber Corporation Employees Retirement Plan; Mercury Group of Companies Provident Fund; Xavier School Employees Retirement Plan; Asian Institute of Management Employees Provident Fund; Consolidated Industrial Gases, Inc., Employees Retirement Plan; Semirara Coal Corporation Employees Retirement Plan; Toyo Menka Kaisha Ltd., Manila Branch Employees Retirement Plan; Sea Commercial Co., Inc. Employees Retirement Plan; AG & P Retirement Plan; La Suerte Cigar and Cigarette Factory Employees Retirement Plan; PNOC Group of Companies Employees Retirement Plan; SGV and Company Provident Fund; Universal Textile Mills, Inc., Retirement Plan; Mitsui & Co., Ltd. Gratuity Plan; Phil. Affilliated Companies (CIGNA) Retirement Plan; Philippine Carpet Manufacturing Corp. Retirement Plan; and Colgate Palmolive Phils., Inc. Employees Provident Fund. See *rollo*, pp. 19-20.

[5] G.R. No. 95022, 23 March 1992, 207 SCRA 487.

[6] Petitioner alleges in its petition that what it filed before the CTA was the Supplemental Petition itself, see *rollo*, p. 21, but the Resolution of the CTA dated 25 August 1995, *infra*, clearly indicates that the Supplemental Petition was actually accompanied by a Motion to Admit Supplemental Petition. See *rollo*, p. 81.

[7] Id. at 81-82. Resolution signed by Presiding Judge Ernesto D. Acosta and Associate Judges Ramon O. De Veyra and Manuel K. Gruba.

[8] Id.

[9] Id. at 125.

[10] Id. at 128.

[11] Id. at 128-129.

[12] Id. at 129.

[13]Id. at 143-146.

[14] Id. at 53-54.

[15] Id. at 56.

[16] Id. at 23.

[17] At present, Republic Act No. 9282, enacted in 2004, mandates that decisions of the CTA are to now be directly elevated to the Supreme Court for review.

[18] See RULES OF CIVIL PROCEDURE, Section 10, Rule 43.

[19] See RULES OF CIVIL PROCEDURE, Section 11, Rule 43.

[20] Supra note 5.

[21] Id. at 495-496.

[22] *Rollo*, p. 29.

[23] See *Comm. of Internal Revenue v. Philamlife*, 314 Phil. 349, 363 (1995); citing *Oral & Dental College v. CTA*, 102 Phil. 912 (1957) and *Panay Electric Co. v. Collector*, 103 Phil. 819 (1958).

[24] *Rollo*, pp. 128-129.

[25] See *Commissioner of Internal Revenue v. CA*, 361 Phil. 103, 115-116 (1999); citing *Philippine Refining Company v. Court of Appeals*, 326 Phil. 680, (1996); *Commissioner of Internal Revenue v. Court of Appeals*, 312 Phil. 337 (1995); *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, 244 SCRA 446 (1995); *CIR v.*

Administratrix of the Estate of Echarri, 67 Phil. 502 (1939).

[26] See *e.g., Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc*., 368 Phil. 388, 411 (1999); citing *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd*., 244 SCRA 332, 26 May 1995; *Province of Tarlac v. Alcantara*, 23 December 1992, 216 SCRA 790; *Magsaysay Lines, Inc. v. Court of Appeals*, 12 August 1996, 260 SCRA 513.

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

[28] Id. at 145-146.
