

## SECOND DIVISION

**[ G.R. No. 173854, March 15, 2010 ]**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. FAR EAST BANK & TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.

This Petition for Review on *Certiorari* assails the January 31, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 56773 which reversed and set aside the October 4, 1999 Decision<sup>[2]</sup> of the Court of Tax Appeals (CTA) in CTA Case No. 5487. Also assailed is the July 19, 2006 Resolution<sup>[3]</sup> of the CA denying the motion for reconsideration.

The CTA found that respondent Far East Bank & Trust Company failed to prove that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return. The CA found otherwise.

#### ***Factual Antecedents***

On April 10, 1995, respondent filed with the Bureau of Internal Revenue (BIR) two Corporate Annual Income Tax Returns, one for its Corporate Banking Unit (CBU)<sup>[4]</sup> and another for its Foreign Currency Deposit Unit (FCDU),<sup>[5]</sup> for the taxable year ending December 31, 1994. The return for the CBU consolidated the respondent's overall income tax liability for 1994, which reflected a refundable income tax of P12,682,864.00, computed as follows:

	<u>FCDU</u>	<u>CBU</u>
Gross Income	P13,319,068	5,348,080,630
Less: Deductions	1,397,157	5,432,828,719
Net Income	11,921,911	[84,748,089]
Tax Rate	<u>35%</u>	<u>35%</u>
Income Tax Due Thereon	4,172,669	NIL

Consolidated	
Tax Due for	
Both CBU	<u>P 4,172,669</u>
and FCDU	
Operations	
Less:	
Quarterly	
Income Tax	
Payments	
CBU -1 <sup>st</sup>	633,085
Quarter	
-2 <sup>nd</sup> Quarter	11,844,333
FCDU -1 <sup>st</sup>	955, 280
Quarter	
-2 <sup>nd</sup> Quarter	1,104,942
Less:	
Creditable	2,317,893
Taxes	
Withheld at	
Source	
Refundable	<u>[P12,682,864]</u> <sup>[6]</sup>
Income Tax	

Pursuant to Section 69<sup>[7]</sup> of the old National Internal Revenue Code (NIRC), the amount of P12,682,864.00 was carried over and applied against respondent's income tax liability for the taxable year ending December 31, 1995. On April 15, 1996, respondent filed its 1995 Annual Income Tax Return, which showed a total overpaid income tax in the amount of P17,443,133.00, detailed as follows:

	<u>FCDU</u>	<u>CBU</u>
Gross Income	P16,531,038	7,076,497,628
Less: Deductions	1,327,549	7,086,821,354
Net Income	15,203,539	[10,423,728]
Tax Rate	<u>35%</u>	<u>35%</u>
Income Tax Due	5,321,239	NIL
Thereon		

Consolidated Tax	
Due for	
Both CBU and	<u>P 5,321,239</u>
FCDU Operations	
Less:	
Prior year's (1994)	12,682,864
excess income tax	
credit	
Additional prior	6,283,484
year's excess	

income tax credit	
Creditable Taxes	
Withheld	at 3,798,024
Source	
Refundable	[P17,443,133] <sup>[8]</sup>
Income Tax	

Out of the P17,433,133.00 refundable income tax, only P13,645,109.00 was sought to be refunded by respondent. As to the remaining P3,798,024.00, respondent opted to carry it over to the next taxable year.

On May 17, 1996, respondent filed a claim for refund of the amount of P13,645,109.00 with the BIR. Due to the failure of petitioner Commissioner of Internal Revenue (CIR) to act on the claim for refund, respondent was compelled to bring the matter to the CTA on April 8, 1997 *via* a Petition for Review docketed as CTA Case No. 5487.

After the filing of petitioner's Answer, trial ensued.

To prove its entitlement to a refund, respondent presented the following documents:

Exhibits	Nature and Description
A	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1994 together with attachments
B	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1994 together with attachments
C	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1995 together with attachments
D	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1995 together with attachments
N to Z; AA to UU	Certificates of Creditable Withholding Tax and Monthly Remittance Returns of Income Taxes Withheld issued by various withholding agents for the year ended December 31, 1994
VV	Letter claim for refund dated May 8, 1996 filed with the Revenue District Office No. 33 on May 17, 1996 <sup>[9]</sup>

Petitioner, on the other hand, did not present any evidence.

### ***Ruling of the Court of Tax Appeals***

On October 4, 1999, the CTA rendered a Decision denying respondent's claim for refund on the ground that respondent failed to show that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return.

On October 20, 1999, respondent filed a Motion for New Trial based on excusable negligence. It prayed that it be allowed to present additional evidence to support its claim for refund.

However, the motion was denied on December 16, 1999 by the CTA. It reasoned, thus:

[Respondent] is reminded that this case was originally submitted for decision as early as September 22, 1998 (p. 497, CTA Records). In view, however, of the Urgent Motion to Admit Memorandum filed on April 27, 1999 by Atty. Louella Martinez, who entered her appearance as collaborating counsel of Atty. Manuel Salvador allegedly due to the latter counsel's absences, this Court set aside its resolution of September 22, 1998 and considered this case submitted for decision as of May 7, 1999. Nonetheless, it took [respondent] another five months after it was represented by a new counsel and after a decision unfavorable to it was rendered before [respondent] realized that an additional material documentary evidence has to be presented by way of a new trial, this time initiated by a third counsel coming from the same law firm. x x x

Furthermore, in ascertaining whether or not the income upon which the taxes were withheld were included in the returns of the [respondent], this Court based its findings on the income tax returns and their supporting schedules prepared and reviewed by the [respondent] itself and which, to Us, are enough to support the conclusion reached.

**WHEREFORE**, in view of the foregoing, [respondent's] Motion for New Trial is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>[10]</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA reversed the Decision of the CTA. The CA found that

respondent has duly proven that the income derived from rentals and sale of real property upon which the taxes were withheld were included in the return as part of the gross income.

Hence, this present recourse.

**Issue**

The lone issue presented in this petition is whether respondent has proven its entitlement to the refund.<sup>[11]</sup>

### **Our Ruling**

We find that the respondent miserably failed to prove its entitlement to the refund. Therefore, we grant the petition filed by the petitioner CIR for being meritorious.

A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

- 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
- 2) It must be shown on the return that the income received was declared as part of the gross income; and
- 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.<sup>[12]</sup>

The two-year period requirement is based on Section 229 of the NIRC of 1997 which provides that:

SECTION 229. 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.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) 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. (*Formerly Section 230 of the old NIRC*)

While the second and third requirements are found under Section 10 of Revenue Regulation No. 6-85, as amended, which reads:

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