

## EN BANC

[ G.R. NO. 109976, April 26, 2005 ]

**PHILIPPINE NATIONAL OIL COMPANY, PETITIONER, VS. THE  
HON. COURT OF APPEALS, THE COMMISSIONER OF INTERNAL  
REVENUE AND TIRSO SAVELLANO, RESPONDENTS.**

**G.R. NO. 112800**

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE HON.  
COURT OF APPEALS, COURT OF TAX APPEALS, TIRSO B.  
SAVELLANO AND COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a consolidation of two Petitions for Review on *Certiorari* filed by the Philippine National Oil Company (PNOC)<sup>[1]</sup> and the Philippine National Bank (PNB),<sup>[2]</sup> assailing the decisions of the Court of Appeals in CA-G.R. SP No. 29583<sup>[3]</sup> and CA-G.R. SP No. 29526,<sup>[4]</sup> respectively, which both affirmed the decision of the Court of Tax Appeals (CTA) in CTA Case No. 4249.<sup>[5]</sup>

The Petitions before this Court originated from a sworn statement submitted by private respondent Tirso B. Savellano (Savellano) to the Bureau of Internal Revenue (BIR) on 24 June 1986. Through his sworn statement, private respondent Savellano informed the BIR that PNB had failed to withhold the 15% final tax on interest earnings and/or yields from the money placements of PNOC with the said bank, in violation of Presidential Decree (P.D.) No. 1931. P.D. No. 1931, which took effect on 11 June 1984, withdrew all tax exemptions of government-owned and controlled corporations.

In a letter, dated 08 August 1986, the BIR requested PNOC to settle its liability for taxes on the interests earned by its money placements with PNB and which PNB did not withhold.<sup>[6]</sup> PNOC wrote the BIR on 25 September 1986, and made an offer to compromise its tax liability, which it estimated to be in the sum of P304,419,396.83, excluding interest and surcharges, as of 31 July 1986. PNOC proposed to set-off its tax liability against a claim for tax refund/credit of the National Power Corporation (NAPOCOR), then pending with the BIR, in the amount of P335,259,450.21. The amount of the claim for tax refund/credit was supposedly a receivable account of PNOC from NAPOCOR.<sup>[7]</sup>

On 08 October 1986, the BIR sent a demand letter to PNB, as withholding agent, for the payment of the final tax on the interest earnings and/or yields from PNOC's money placements with the bank, from 15 October 1984 to 15 October 1986, in the

total amount of P376,301,133.33.<sup>[8]</sup> On the same date, the BIR also mailed a letter to PNOC informing it of the demand letter sent to PNB.<sup>[9]</sup>

PNOC, in another letter, dated 14 October 1986, reiterated its proposal to settle its tax liability through the set-off of the said tax liability against NAPOCOR'S pending claim for tax refund/credit.<sup>[10]</sup> The BIR replied on 11 November 1986 that the proposal for set-off was premature since NAPOCOR's claim was still under process. Once more, BIR requested PNOC to settle its tax liability in the total amount of P385,961,580.82, consisting of P303,343,765.32 final tax, plus P82,617,815.50 interest computed until 15 November 1986.<sup>[11]</sup>

On 09 June 1987, PNOC made another offer to the BIR to settle its tax liability. This time, however, PNOC proposed a compromise by paying P91,003,129.89, representing 30% of the P303,343,766.29 basic tax, in accordance with the provisions of Executive Order (E.O.) No. 44.<sup>[12]</sup>

Then BIR Commissioner Bienvenido A. Tan, in a letter, dated 22 June 1987, accepted the compromise. The BIR received a total tax payment on the interest earnings and/or yields from PNOC's money placements with PNB in the amount of P93,955,479.12, broken down as follows:

Previous payment made by PNB	P 2,952,349.23
Add: Payment made by PNOC pursuant to the compromise agreement of June 22, 1987	<u>P 91,003,129.89</u>
Total tax payment	<u>P93,955,479.12</u> <sup>[13]</sup>

Private respondent Savellano, through four installments, was paid the informer's reward in the total amount of P14,093,321.89, representing 15% of the P93,955,479.12 tax collected by the BIR from PNOC and PNB. He received the last installment on 01 December 1987.<sup>[14]</sup>

On 07 January 1988, private respondent Savellano, through his legal counsel, wrote the BIR to demand payment of the balance of his informer's reward, computed as follows:

BIR tax assessment	P 385,961,580.82
Final tax rate	<u>0.15</u>
Informer's reward due	P 57,894,237.12
(BIR deficiency tax assessment x Final tax rate)	
Less: Payment received by private respondent Savellano	<u>P 14,093,321.89</u>
Outstanding balance	<u>P43,800,915.25</u> <sup>[15]</sup>

BIR Commissioner Tan replied through a letter, dated 08 March 1988, that private respondent Savellano was already fully paid the informer's reward equivalent to 15% of the amount of tax actually collected by the BIR pursuant to its compromise agreement with PNOC. BIR Commissioner Tan further explained that the compromise was in accordance with the provisions of E.O. No. 44, Revenue Memorandum Order (RMO) No. 39-86, and RMO No. 4-87.<sup>[16]</sup>

Private respondent Savellano submitted another letter, dated 24 March 1988, to BIR Commissioner Tan, seeking reconsideration of his decision to compromise the tax liability of PNOC. In the same letter, private respondent Savellano questioned the legality of the compromise agreement entered into by the BIR and PNOC and claimed that the tax liability should have been collected in full.<sup>[17]</sup>

On 08 April 1988, while the aforesaid Motion for Reconsideration was still pending with the BIR, private respondent Savellano filed a Petition for Review *ad cautelam* with the CTA, docketed as CTA Case No. 4249. He claimed therein that BIR Commissioner Tan acted "with grave abuse of discretion and/or whimsical exercise of jurisdiction" in entering into a compromise agreement that resulted in "a gross and unconscionable diminution" of his reward. Private respondent Savellano prayed for the enforcement and collection of the total tax assessment against taxpayer PNOC and/or withholding agent PNB; and the payment to him by the BIR Commissioner of the 15% informer's reward on the total tax collected.<sup>[18]</sup> He would later amend his Petition to implead PNOC and PNB as necessary and indispensable parties since they were parties to the compromise agreement.<sup>[19]</sup>

In his Answer filed with the CTA, BIR Commissioner Tan asserted that the Petition stated no cause of action against him, and that private respondent Savellano was already paid the informer's reward due him. Alleging that the Petition was baseless and malicious, BIR Commissioner Tan filed a counterclaim for exemplary damages against private respondent Savellano.<sup>[20]</sup>

PNOC and PNB filed separate Motions to Dismiss, both arguing that the CTA lacked jurisdiction to decide the case.<sup>[21]</sup> In its Resolution, dated 28 November 1988, the CTA denied the Motions to Dismiss since the question of lack of jurisdiction and/or cause of action do not appear to be indubitable.<sup>[22]</sup>

After their Motions to Dismiss were denied by the CTA, PNOC and PNB filed their respective Answers to the amended Petition. PNOC averred, among other things, that (1) it had no privity with private respondent Savellano; (2) the BIR Commissioner's discretionary act in entering into the compromise agreement had legal basis under E.O. No. 44 and RMO No. 39-86 and RMO No. 4-87; and (3) the CTA had no jurisdiction to resolve the case against it.<sup>[23]</sup> On the other hand, PNB asserted that (1) the CTA lacked jurisdiction over the case; and (2) the BIR Commissioner's decision to accept the compromise was discretionary on his part and, therefore, cannot be reviewed or interfered with by the courts.<sup>[24]</sup> PNOC and PNB later filed their amended Answer invoking an opinion of the Commission on Audit (COA) disallowing the payment by the BIR of informer's reward to private respondent Savellano.<sup>[25]</sup>

The CTA, thereafter, ordered the parties to submit their evidence,<sup>[26]</sup> to be followed by their respective Memoranda.<sup>[27]</sup>

On 23 November 1990, private respondent Savellano, filed a Manifestation with Motion for Suspension of Proceedings, claiming that his pending Motion for Reconsideration with the BIR Commissioner may soon be resolved.<sup>[28]</sup> Both PNOC and PNB opposed the said Motion.<sup>[29]</sup>

Subsequently, the new BIR Commissioner, Jose U. Ong, in a letter to PNB, dated 16 January 1991, demanded that PNB pay deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements, in the amount of P294,958,450.73, computed as follows:

Withholding tax, plus interest under the letter of demand dated November 11, 1986	P 385,961,580.82
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Less: Amount paid under E.O. No. P 44	<u>91,003,129.89</u>
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Amount still due and collectible	P294,958,450.73 <sup>[30]</sup>
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This BIR letter was received by PNB on 06 February 1991,<sup>[31]</sup> and was protested by it through a letter, dated 11 April 1991.<sup>[32]</sup> The BIR denied PNB's protest on the ground that it was filed out of time and, thus, the assessment had already become final.<sup>[33]</sup>

Private respondent Savellano, on 22 February 1991, filed an Omnibus Motion moving to withdraw his previous Motion for Suspension of Proceeding since BIR Commissioner Ong had finally resolved his Motion for Reconsideration, and submitting by way of supplemental offer of evidence (1) the letter of BIR Commissioner Ong, dated 13 February 1991, informing private respondent Savellano of the action on his Motion for Reconsideration; and (2) the demand-letter of BIR Commissioner Ong to PNB, dated 16 January 1991.<sup>[34]</sup>

Despite the oppositions of PNOC and PNB, the CTA, in a Resolution, dated 02 May 1991, resolved to allow private respondent Savellano to withdraw his previous Motion for Suspension of Proceeding and to admit the supplementary evidence being offered by the same party.<sup>[35]</sup>

In its Order, dated 03 June 1991, the CTA considered the case submitted for decision as of the following day, 04 June 1991.<sup>[36]</sup>

On 11 June 1991, PNB appealed to the Department of Justice (DOJ) the BIR assessment, dated 16 January 1991, for deficiency withholding tax in the sum of P294,958,450.73. PNB alleged that its appeal to the DOJ was sanctioned under P.D. No. 242, which provided for the administrative settlement of disputes between government offices, agencies, and instrumentalities, including government-owned and controlled corporations.<sup>[37]</sup>

Three days later, on 14 June 1991, PNB filed a Motion to Suspend Proceedings before the CTA since it had a pending appeal before the DOJ.<sup>[38]</sup> On 04 July 1991, PNB filed with the CTA a Motion for Reconsideration of its Order, dated 03 June 1991, submitting the case for decision as of 04 June 1991, and prayed that the CTA hold its resolution of the case in view of PNB's appeal pending before the DOJ.<sup>[39]</sup>

On 17 July 1991, PNB filed a Motion to Suspend the Collection of Tax by the BIR. It alleged that despite its request for reconsideration of the deficiency withholding tax assessment, dated 16 January 1991, BIR Commissioner Ong sent another letter, dated 23 April 1991, demanding payment of the P294,958,450.73 deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements. The same letter informed PNB that this was the BIR Commissioner's final decision on the matter and that the BIR Commissioner was set to issue a warrant of distraint and/or levy against PNB's deposits with the Central Bank of the Philippines. PNB further alleged that the levy and distraint of PNB's deposits, unless restrained by the CTA, would cause great and irreparable prejudice not only to PNB, a government-owned and controlled corporation, but also to the Government itself.<sup>[40]</sup>

Pursuant to the Order of the CTA, during the hearing on 19 July 1991,<sup>[41]</sup> the parties submitted their respective Memoranda on PNB's Motion to Suspend Proceedings.<sup>[42]</sup>

On 20 September 1991, private respondent Savellano filed another Omnibus Motion calling the attention of the CTA to the fact that the BIR already issued, on 12 August 1991, a warrant of garnishment addressed to the Central Bank Governor and against PNB. In compliance with the said warrant, the Central Bank issued, on 23 August 1991, a debit advice against the demand deposit account of PNB with the Central Bank for the amount of P294,958,450.73, with a corresponding transfer of the same amount to the demand deposit-in-trust of BIR with the Central Bank. Since the assessment had already been enforced, PNB's Motion to Suspend Proceedings became moot and academic. Private respondent Savellano, thus, moved for the denial of PNB's Motion to Suspend Proceedings and for an order requiring BIR to deposit with the CTA the amount of P44,243,767.00 as his informer's reward, representing 15% of the deficiency withholding tax collected.<sup>[43]</sup>

Both PNOC and PNB opposed private respondent Savellano's Omnibus Motion, dated 20 September 1991, arguing that the DOJ already ordered the suspension of the collection of the tax deficiency. There was therefore no basis for private respondent Savellano's Motion as the same was premised on the erroneous assumption that the tax deficiency had been collected. When the DOJ denied the BIR Commissioner's Motion to Dismiss and required him to file his answer, the DOJ assumed jurisdiction over PNB's appeal, and the CTA should first suspend its proceedings to give the DOJ the opportunity to decide the validity and propriety of the tax assessment against PNB.<sup>[44]</sup>

The CTA, on 28 May 1992, rendered its decision, wherein it upheld its jurisdiction and disposed of the case as follows:

WHEREFORE, judgment is rendered declaring the COMPROMISE AGREEMENT between the Bureau of Internal Revenue, on the one hand,