

## 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