THIRTEENTH DIVISION

[CA-G.R. SP No. 72774, March 28, 2014]

ING BANK (MANILA BRANCH), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

YBAÑEZ, J.:

Before Us is a Petition for Review filed by petitioner ING Bank (Manila Branch) under Rule 43 of the Revised Rules of Court seeking to reverse and set aside the Decision rendered on 11 March 2002 by the Court of Tax Appeals in CTA Case No. 6017, and the Resolution dated 21 August 2002 denying the Motion for Reconsideration thereof.

The Facts

Petitioner ING Bank (Manila Branch) is a foreign corporation duly licensed by the Securities and Exchange Commission (SEC) and authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in commercial banking operations and operate a Foreign Currency Deposit Unit (FCDU).

The FCDU of petitioner earned net income in the amounts of Three Hundred Sixteen Million Three Hundred Eight Thousand and Two Hundred Sixty-Three Pesos (P316,308,263.00) and Three Hundred Ninety-Three Million Four Hundred Thirteen Thousand and Six Hundred Eighty-Eight Pesos (P393,413,688.00) for taxable years 1996 and 1997, respectively.

In September 1998, petitioner remitted to its head office abroad branch profits from its FCDU operation in the amount of Two Hundred Sixty-Nine Million One Hundred Sixty-Seven Thousand and Two Hundred Seven Pesos (P269,167,207.00) out of the said net income for 1996 and 1997. For the said remittance, petitioner paid the BIR 10% branch profit remittance tax in the amount of Twenty-Six Million Nine-Hundred Sixteen Thousand Seven Hundred Twenty Pesos and Seventy Centavos (P26,916,720.70) for the month of September 1998.

On 12 July 1999, petitioner filed with the Bureau of Internal Revenue (BIR) a claim for refund[1] of the alleged erroneously paid branch profit remittance tax in the amount of P26,916,720.70, since, according to petitioner, Section 3 of Revenue Regulations No. 10-76 substantially provides that the preferential tax rates accorded to FCDUs shall be in lieu of all other taxes such as, but not limited to, privilege tax, gross receipt tax, documentary and science stamp tax and profit remittance tax. Accordingly, the subsequent remittance of profits by branches of foreign commercial banks operating an FCDU to their head office, taken out of the onshore and offshore income of the FCDU, is not subject to branch profit remittance tax.

On 24 January 2000, petitioner received a letter[2] from the respondent Commissioner of Internal Revenue denying the request for refund/tax credit of

erroneously paid branch profit remittance tax in the amount of P26,916,720.70.

Aggrieved, petitioner filed on 17 February 2000 a Petition for Review[3] with the Court of Tax Appeals (CTA) pursuant to Section 7 of Republic Act No. 1125 and Section 229 of the 1997 National Internal Revenue Code (NIRC).

In said Petition, petitioner alleged that the 10% final tax imposed on income derived by FCDUs under Section 28(A)(7)(b) of the Tax Code is in lieu of all other taxes such as but not limited to privilege tax, gross receipts tax, documentary and science stamp tax and branch profit remittance tax, as provided under Section 3 of Revenue Regulations No. 10-76. Thus, according to petitioner, the subsequent remittance of profits by branches of foreign commercial banks operating an FCDU to their head offices, taken out of the onshore and offshore income of the FCDU, is not subject to branch profit remittance tax.

In his Answer[4], respondent countered that, petitioner's FCDU and regular banking unit are one and the same entity; and hence, the income of one unit is the income of the entire bank. In fact, since income and expenses are consolidated during the whole year, petitioner is subject to pay branch profit remittance tax. Respondent further stated that the amount sought to be refunded was already credited to the deficiency branch profit remittance tax assessment for 1997 issued against petitioner.

Moreover, respondent insists that petitioner has the burden of proving that it is indeed entitled to the credit sought as it is a well-settled rule that claims for tax refund/tax credit are construed in *"strictissimi juris"* against the taxpayer. This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the petitioner to prove that it is indeed entitled to the tax refund sought, as he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. According to respondent, failure on the part of petitioner to prove the same is fatal to its claim for tax refund.

On 11 March 2002, the CTA rendered the assailed Decision[5] denying the petition. It held that petitioner's FCDU is subject to the branch profit remittance tax provided under Section 28(A)(5) of the 1997 NIRC and, therefore, petitioner is not entitled to the refund sought for.

Aggrieved, petitioner filed a Motion for Reconsideration[6] of the said Decision. Subsequently, it likewise filed a Supplemental to Motion for Reconsideration of Decision[7], both of which were denied by the CTA in the assailed Resolution[8] dated 21 August 2002.

Undaunted, petitioner filed the instant petition[9] raising the following assigned errors[10] purportedly committed by the CTA, *viz*:

I.

THE HONORABLE COURT OF TAX APPEALS ERRED IN ISSUING THE QUESTIONED DECISION DATED 11 MARCH 2002 AND RESOLUTION

DATED 21 AUGUST 2002 THEREBY DENYING PETITIONER ING BANK'S REQUEST FOR A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF TWENTY SIX MILLION NINE HUNDRED SIXTEEN THOUSAND SEVEN HUNDRED TWENTY AND 70/100 PESOS (P26,916,720.70) REPRESENTING ERRONEOUSLY PAID BRANCH PROFIT REMITTANCE TAX FOR TAXABLE YEAR 1998 CONSIDERING THAT:

A. CONTRARY TO THE FINDINGS OF THE COURT OF TAX APPEALS, THE FINAL TAX ON INCOME DERIVED UNDER THE FOREIGN CURRENCY DEPSOIT SYSTEM IS IN LIEU OF ALL OTHER TAXES, INCLUDING THE BRANCH PROFIT REMITTANCE TAX.

B. CONTRARY TO THE FINDINGS OF THE COURT OF TAX APPEALS, THE SENATE DELIBERATIONS DO NOT SHOW A DELIBERATE INTENT TO REVOKE ALL TAX PRIVILEGES OF FOREIGN CURENCY DEPOSIT UNITS, INCLUDING THE EXEMPTION FROM PAYMENT OF THE BRANCH PROFIT REMITTANCE TAX.

C. THE COURT OF TAX APPEALS ERRED WHEN IT ALTOGETHER FAILED TO ADDRESS THE ISSUE RAISED BY PETITIONER ING BANK THAT EVEN ASSUMING ARGUENDO THAT PETITIONER ING BANK IS ALREADY SUBJECT TO THE PAYMENT OF BRANCH PROFIT REMITTANCE TAX UNDER THE 1997 TAX CODE, INCOME FROM TRANSACTIONS WITH NON-RESIDENTS OR ITS OFFSHORE INCOME CONTINUES TO BE EXEMPT FROM ALL TAXES, INCLUDING THE PAYMENT OF THE BRANCH PROFIT REMITTANCE TAX

D. THE COURT OF TAX APPEALS' INTERPRETATION OF THE 1997 TAX CODE THAT SUBJECTS THE INCOME OF THE FOREIGN CURRENCY DEPOSIT UNIT TO A FINAL TAX OF TEN PERCENT (10%) AND PAYMENT OF TEN PERCENT (10%) FOR BRANCH PROFIT REMITTANCE TAX IS CONTRARY TO LAW

II.

THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT PETITIONER ING BANK FAILED TO SHOW AN EXPRESS PROVISION OF

LAW EXEMPTING IT FROM THE BRANCH PROFIT REMITTANCE TAX

III.

THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT PETITIONER ING BANK MUST FIRST PROVE ACTUAL PAYMENT OF THE 10% FINAL TAX ON INCOME DERIVED UNDER THE FOREIGN CURRENCY DEPOSIT SYSTEM BEFORE IT CAN BE ENTITLED TO A REFUND ON ERRONEOUSLY PAID BRANCH PROFIT REMITTANCE TAX

In this Court's Resolution[11] dated 12 August 2004 issued by the former thirteenth division, We referred the instant petition to the CTA en banc for adjudication, since under the pertinent provisions of R.A. 9282, otherwise known as *"An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes"*, the Court of Appeals (CA) no longer exercises jurisdiction over appeals from decisions rendered by a division of the CTA; hence, this appeal must be decided by the CTA en banc, in the exercise of its appellate jurisdiction.

The CTA, in a letter dated 2 September 2004, signed by Associate Justices Juanito Castañeda Jr. and Lovell R. Bautista, referred the petition back to the CA with the observation that jurisdiction thereon had already been conferred to this Court.

However, on 18 January 2005, the former twelfth division of this Court issued a Resolution reiterating its view that the legislative intent in the passage of RA 9282 is to delegate the exclusive determination of tax cases to the CTA on account of its expertise on the subject of taxation, so that even appeals from decisions of CTA divisions already pending with the CA should be resolved by the CTA *en banc*. Hence, this Court resolved to return the instant petition, with its entire records, to the CTA en banc for resolution.

The CTA *en banc*, on 01 March 2005, issued a Resolution returning the instant petition to the CA for proper disposition. The CTA reiterated its stand that the CA must resolve the instant petition since it had previously acquired jurisdiction over the case.

Thus, after the parties submitted their respective memoranda, this Court issued a Resolution[12] on 26 November 2013 declaring the instant case submitted for decision.

The Issue

The core issue presented for Our resolution is whether or not petitioner is exempt from the payment of branch profit remittance tax, and hence, entitled to the tax refund sought.

Our Ruling

The petition has no merit.