567 Phil. 308

SECOND DIVISION

[G.R. No. 157264, January 31, 2008]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner, the Philippine Long Distance Telephone Company (PLDT), claiming that it terminated in 1995 the employment of several rank-and-file, supervisory, and executive employees due to redundancy; that in compliance with labor law requirements, it paid those separated employees separation pay and other benefits; and that as employer and withholding agent, it deducted from the separation pay withholding taxes in the total amount of P23,707,909.20 which it remitted to the Bureau of Internal Revenue (BIR), filed on November 20, 1997 with the BIR a claim for tax credit or refund of the P23,707,909.20, invoking Section 28(b)(7)(B) of the 1977 National Internal Revenue Code[1] which excluded from gross income

> [a]ny amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee.[2] (Underscoring supplied)

As the BIR took no action on its claim, PLDT filed a claim for judicial refund before the Court of Tax Appeals (CTA).

In its Answer,[3] respondent, the Commissioner of Internal Revenue, contended that PLDT failed to show proof of payment of separation pay and remittance of the alleged withheld taxes.[4]

PLDT later manifested on March 19, 1998 that it was reducing its claim to P16,439,777.61 because a number of the separated employees opted to file their respective claims for refund of taxes erroneously withheld from their separation pay.[5]

PLDT thereafter retained Sycip Gorres Velayo and Company (SGV) to conduct a special audit examination of various receipts, invoices and other long accounts, and moved to avail of the procedure laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, allowing the presentation of a certification of an independent certified public accountant in lieu of voluminous documents.[6] The CTA thereupon appointed Amelia Cabal (Cabal) of SGV as Commissioner of the court.[7] Cabal's audit report, which formed part of PLDT's evidence,[8] adjusted PLDT's claim to P6,679,167.72.[9]

By Decision[10] of July 25, 2000, the CTA denied PLDT's claim on the ground that it "failed to sufficiently prove that the terminated employees received separation pay and that taxes were withheld therefrom and remitted to the BIR."[11]

PLDT filed a Motion for New Trial/Reconsideration, praying for an opportunity to present the receipts and quitclaims executed by the employees and prove that they received their separation pay.[12] Justifying its motion, PLDT alleged that

> x x x [t]hese Receipts and Quitclaims could not be presented during the course of the trial despite diligent efforts, the files having been misplaced and were only recently found. Through excusable mistake or inadvertence, undersigned counsel relied on the audit of SGV & Co. of the voluminous cash salary vouchers, and was thus not made wary of the fact that the cash salary vouchers for the rank and file employees do not have acknowledgement receipts, unlike the cash salary vouchers for the supervisory and executive employees. If admitted in evidence, these Receipts and Quitclaims, together with the cash salary vouchers, will prove that the rank and file employees received their separation pay from petitioner.[13] (Underscoring supplied)

The CTA denied PLDT's motion.[14]

PLDT thus filed a Petition for Review[15] before the Court of Appeals which, by Decision[16] of February 11, 2002, dismissed the same. PLDT's Motion for Reconsideration[17] having been denied,[18] it filed the present Petition for Review on Certiorari,[19] faulting the appellate court to have committed grave abuse of discretion

A.

> . . . WHEN IT HELD THAT PROOF OF PAYMENT OF SEPARATION PAY TO THE EMPLOYEES IS REQUIRED IN ORDER TO AVAIL OF REFUND OF TAXES ERRONEOUSLY PAID TO THE BUREAU OF INTERNAL REVENUE.

B.

> . . . WHEN IT HELD THAT PETITIONER FAILED TO ESTABLISH THAT PETITIONER'S EMPLOYEES RECEIVED THEIR SEPARATION PAY.

C.

> . . . IN DISREGARDING THE CERTIFICA-TION/REPORT OF SGV & CO., WHICH CERTIFIED THAT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF P6,679,167.72.

D.

> . . . IN NOT ORDERING A NEW TRIAL TO ALLOW PETITIONER TO PRESENT ADDITIONAL EVIDENCE IN SUPPORT THEREOF.[20]

PLDT argues against the need for proof that the employees received their separation pay and proffers the issue in the case in this wise:

> It is not essential to prove that the separation pay benefits were actually received by the terminated employees. This issue is not for the CTA, nor the Court of Appeals to resolve, but is a matter that falls within the competence and exclusive jurisdiction of the Department of Labor and Employment and/or the National Labor Relations Commission. x x x
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> Proving, or submitting evidence to prove, receipt of separation pay would have been material, relevant and necessary if its deductibility as a business expense has been put in issue. But this has never been an issue in the instant case. The issue is whether or not the withholding taxes, which Petitioner remitted to the BIR, should be refunded for having been erroneously withheld and paid to the latter.
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> For as long as there is no legal basis for the payment of taxes to the BIR, the taxpayer is entitled to claim a refund therefore. **Hence, any taxes withheld from separation benefits and paid to the BIR constitute erroneous payment of taxes and should therefore, be refunded/credited to the taxpayer/withholding agent, regardless of whether or not separation pay was actually paid to the concerned employees.**[21] (Emphasis in the original; underscoring supplied)

PLDT's position does not lie. Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the *taxpayer bears the burden of establishing the factual basis of his claim for a refund.*[22]

Under the earlier quoted portion of Section 28 (b)(7)(B) of the National Internal Revenue Code of 1977 (now Section 32(B)6(b) of the National Internal Revenue Code of 1997), it is incumbent on PLDT as a claimant for refund on behalf of each of the separated employees to show that each employee did

> x x x 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.
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> 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. On this score, the relevant revenue regulation provides as follows:
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> > "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 payer to the payee (BIR Form No. 1743.1)

showing the amount paid and the amount of tax withheld therefrom."[23] (Underscoring supplied)

In fine, PLDT must prove that the employees received the income payments as part of gross income and the fact of withholding.

The CTA found that PLDT failed to establish that the redundant employees actually received separation pay and that it withheld taxes therefrom and remitted the same to the BIR, thus:

> With respect to the redundant rank and file employees' final payment/terminal pay x x x, the cash salary vouchers relative thereto have **no payment acknowledgement receipts.** Inasmuch as these cash vouchers were not signed by the respective employees to prove actual receipt of payment, the same merely serves as proofs of authorization for payment and not actual payment by the Petitioner of the redundant rank and file employees' separation pay and other benefits. In other words, Petitioner failed to prove that the rank and file employees were actually paid separation pay and other benefits.
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> To establish that the withholding taxes deducted from the redundant employees' separation pay/other benefits were actually remitted to the BIR, therein petitioner submitted the following:

a) Monthly Remittance Return of Income Taxes Withheld for December 1995	Exhibit D
b) Revised SGV & Co. Certification	E to E-3-d
c) Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1995	E-6
d) Summary of Income Taxes Withheld for the calendar year ended December 31, 1995	E-6-a
e) Summary of Gross Compensation and Tax Withheld	E-6-b to E-6-e

> However, it cannot be determined from the above documents whether or not Petitioner actually remitted the total income taxes withheld from the redundant employees' taxable compensation (inclusive of the separation

> pay/other benefits) for the year 1995. **The amounts of total taxes withheld for each redundant employees (Exhs. E-4, E-5, E-7, inclusive) cannot be verified against the "Summary of Gross Compensation and Tax Withheld for 1995" (Exhs. E-6-b to E-6-e, inclusive) due to the fact that this summary enumerates the amounts of income taxes withheld from Petitioner's employees on per district/area basis.** The only schedule (with names, corresponding gross compensation, and withholding taxes) attached to the summary was for the withholding taxes on service terminal pay (Exh. E-6-e). However, the names listed thereon were not among the names of the redundant separated employees being claimed by petitioner.
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> x x x x
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> It is worthy to note that Respondent presented a witness in the person of Atty. Rodolfo L. Salazar, Chief of the BIR Appellate Division, who testified that a portion of the Petitioner's original claim for refund of P23,706,908.20 had already been granted. He also testified that out of 769 claimants, who opted to file directly with the BIR, 766 had been processed and granted. In fact, x x x three claims were not processed because the concerned taxpayer failed to submit the income tax returns and withholding tax certificates. Considering that no documentary evidence was presented to bolster said testimony, **We have no means of counter checking whether the 766 alleged to have been already granted by the Respondent pertained to the P16,439,777.61 claim for refund withdrawn by the Petitioner from the instant petition or to the remaining balance of P6,679,167.72 which is the subject of this claim**.[24] (Emphasis and underscoring supplied)

The appellate court affirmed the foregoing findings of the CTA. A*propos is this Court's ruling in Far East Bank and Trust Company v. Court of Appeals:*[25]

> 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 upon this Court, especially if these are substantially similar to the findings of the C[ourt of] A[ppeals] which is normally the final arbiter of questions of fact.[26] (Underscoring supplied)

While SGV certified that it had "been able to trace the remittance of the withheld taxes summarized in the C[ash] S[alary] V[ouchers] to the Monthly Remittance Return of Income Taxes Withheld for the appropriate period covered by the final payment made to the concerned executives, supervisors, and rank and file staff members of PLDT,"[27] the same cannot be appreciated in PLDT's favor as the courts cannot verify such claim. While the records of the case contain the Alphabetical List of Employee from Whom Taxes Were Withheld for the year 1995 and the Monthly Remittance Returns of Income Taxes Withheld for December 1995, the documents from which SGV "traced" the former to the latter have not been presented. Failure to present these documents is fatal to PLDT's case. For the relevant portions of CTA Circular 1-95 instruct: