

## THIRD DIVISION

[ G.R. NO. 155682, March 27, 2007 ]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER,  
VS. AND COMMISSIONER OF INTERNAL  
REVENUE, RESPONDENTS.**

### D E C I S I O N

#### **AUSTRIA-MARTINEZ, J.:**

Herein Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the May 28, 2002 Decision<sup>[1]</sup> and October 16, 2002 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 55470<sup>[3]</sup> which affirmed the October 5, 1999 Decision<sup>[4]</sup> of the Court of Tax Appeals (CTA) in CTA Case No. 5611.

The facts are as stated by the CTA.<sup>[5]</sup>

In its Bureau of Internal Revenue (BIR) Form No. 1702 or Corporation/Partnership Annual Income Tax Return<sup>[6]</sup> for fiscal year 1995, Banco Filipino Savings and Mortgage Bank (petitioner) declared a net operating loss of P211,476,241.00 and total tax credit of P13,103,918.00, representing the prior year's excess tax credit of P11,481,342.00 and creditable withholding taxes of P1,622,576.00.<sup>[7]</sup>

On February 4, 1998, petitioner filed with the Commissioner of Internal Revenue (CIR) an administrative claim<sup>[8]</sup> for refund of creditable taxes withheld for the year 1995 in the amount of P1,622,576.00.

As the CIR failed to act on its claim, petitioner filed a Petition for Review<sup>[9]</sup> with the CTA on April 13, 1998. It attached to its Petition several documents, including: 1) Certificate of Income Tax Withheld on Compensation (BIR Form No. W-2) for the Year 1995 executed by Oscar Lozano covering P720.00 as tax withheld on rental income paid to petitioner (Exhibit "II");<sup>[10]</sup> and 2) Monthly Remittance Return of Income Taxes Withheld under BIR Form No. 1743W issued by petitioner, indicating various amounts it withheld and remitted to the BIR (Exhibits "C" through "Z").<sup>[11]</sup>

In his Answer,<sup>[12]</sup> respondent CIR interposed special and affirmative defenses, specifically that petitioner's claim is not properly documented.

The CTA issued the October 5, 1999 Decision granting only a portion of petitioner's claim for refund, thus:

WHEREFORE, in view of all the foregoing, Respondent is hereby ORDERED to REFUND or in the alternative to ISSUE a Tax Credit Certificate in the amount of EIGHTEEN THOUSAND EIGHT HUNDRED

EIGHTY FOUR PESOS AND FORTY CENTAVOS (P18,884.40) in favor of the Petitioner, representing overpaid income tax for the year 1995.

SO ORDERED.<sup>[13]</sup>

The CTA allowed the P18,884.40-portion of petitioner's claim for refund as these are covered by Exhibits "AA" through "HH",<sup>[14]</sup> which are all in BIR Form No. 1743-750 (Certificate of Creditable Tax Withheld at Source) issued by various payors and reflecting taxes deducted and withheld on petitioner-payee's income from the rental of its real properties. On the other hand, the CTA disallowed the P1,603,691.60-portion of petitioner's claim for tax refund on the ground that its Exhibit "II" and Exhibits "C" through "Z" lack probative value as these are not in BIR Form No. 1743.1,<sup>[15]</sup> the form required under Revenue Regulations No. 6-85 (as amended by Revenue Regulation No. 12-94), to support a claim for refund.<sup>[16]</sup>

Petitioner filed a Petition for Review<sup>[17]</sup> with the CA but the CA dismissed the same in the May 28, 2002 Decision assailed herein. Its Motion for Reconsideration was also denied.<sup>[18]</sup>

Hence, herein Petition where the issues may be condensed into one: whether the CA erred in affirming the disallowance by the CTA of P1,603,691.60 of petitioner's claim for tax refund on the ground that the latter's Exhibit "II" and Exhibits "C" through "Z" lack probative value.

The CA committed no error.

There are three conditions for the grant of a claim for refund of creditable withholding tax: 1) the claim is filed with the CIR within the two-year period from the date of payment of the tax;<sup>[19]</sup> 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;<sup>[20]</sup> and, 3) the fact of withholding is 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 therefrom. The third condition is specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), thus:

Sec. 10. *Claim for tax credit or refund.* - (a) 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 has been declared as part of the gross income and **the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom** xxx.  
(Emphasis supplied)

There is no doubt that petitioner complied with the first two requirements in that the claim it filed on January 30, 1998 was well within the two-year prescriptive period counted from the date of filing of its annual income tax return (Exhibit "A") on April 12, 1996; and that said return reflects the amount of P1,622,576.00 subject of the claim.<sup>[21]</sup>

The question is whether it complied with the third condition by presenting merely a

Certificate of Income Tax Withheld on Compensation or BIR Form No. W-2 (Exhibit "II") and Monthly Remittance Return of Income Taxes Withheld under BIR Form No. 1743W (Exhibits "C" through "Z").

Petitioner argues that its Exhibit "II" and Exhibits "C" through "Z" should be accorded the same probative value as a BIR Form No. 1743.1, for said documents are also official BIR forms and they reflect the fact that taxes were actually withheld and remitted. It appeals for liberality considering that its annual return clearly shows that it is entitled to creditable withholding tax. [22]

The Court rejected a similar plea for liberality just recently in *Far East Bank and Trust Company v. Court of Appeals*. [23] In that case, Far East Bank and Trust Company (FEBTC), acting as the surviving entity from a merger with Cavite Development Bank (CDB), filed a claim for refund of creditable taxes withheld by CDB from the sale of its acquired assets. FEBTC attached to its claim: a) confirmation receipts, payment orders and official receipts issued by the Central Bank and the BIR; b) Income Tax Returns supported by financial statements filed by FEBTC with the BIR; and c) a schedule prepared by FEBTC Accounting Department of the creditable withholding taxes of CDB. FEBTC did not, however, attach any BIR Form No. 1743.1. The CTA and CA disallowed FEBTC's claim for refund. The Court affirmed the CTA and CA, thus:

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 in 1990 and 1991. It does not follow that the payments reflected in the confirmation receipts relate to the creditable withholding taxes arising from the sale of the acquired properties.*** The claim that CDB had excess creditable withholding taxes can only be upheld if it were clearly and positively shown that the amounts on the various confirmation receipts were the amounts withheld by virtue of the sale of the acquired assets. On this point, the CA correctly pronounced:

The confirmation receipts alone, by themselves, will not suffice to prove that the taxes reflected in the income tax returns are the same taxes withheld from CDB's income payments from the sale of its acquired assets. ***This is because a cursory examination of the said Confirmation Receipts, Payment Orders and Official Receipts will show that what are reflected therein are merely the names of the payors and the amount of tax. The nature of the tax paid, or at the very least, the income payments from which the taxes paid were withheld are not reflected therein.*** If these are the only entries that are found on these proffered documents, We cannot begrudge the Respondent Court from nurturing veritable doubts on the nature and identity of the taxes withheld, when it declared, in part, in its Decision (Annex "A" of the Petition) that, "It can not well be said that the amounts paid and remitted to the BIR were for CDB's account and not for the other possible payees