345 Phil. 695

THIRD DIVISION

[G.R. No. 107434, October 10, 1997]

CITIBANK, N. A., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS. D E C I S I O N

PANGANIBAN, J.:

The law requires a lessee to withhold and remit to the Bureau of Internal Revenue (BIR) five percent (5%) of the rental due the lessor, by way of advance payment of the latter's income tax liability. Is the lessor entitled to a refund of such withheld amount after it is determined that the lessor was not, in fact, liable for any income tax at all because its annual operation resulted in a net loss as shown in its income tax return filed at the end of the taxable year?

This is the question raised in this petition for review on certiorari of the Court of Appeals[1] Decision[2] promulgated on May 27, 1992 and Resolution[3] promulgated on October 5, 1992 in CA-G.R. No. SP-26555, reversing the decision of the Court of Tax Appeals which allowed the tax refund.

The Facts

The facts, as found by Respondent Court, are undisputed.[4]

> "From the pleadings and supporting papers on hand, it can be gathered that Citibank N.A. Philippine Branch (CITIBANK) is a foreign corporation doing business in the Philippines. In 1979 and 1980, its tenants withheld and paid to the Bureau of Internal Revenue the following taxes on rents due to Citibank, pursuant to Section 1(c) of the Expanded Withholding Tax Regulations (BIR Revenue Regulations No. 13-78, as amended), to wit:

1979	
First quarter	P 60,690.97
Second quarter	69,897.08
Third quarter	69,160.89
Fourth quarter	70,160.56
	P270,160.56
1980	
First quarter	P 78,370.22
Second quarter	69,049.37
Third quarter	79,139.60

Fourth quarter	72,270.10
	P298,829.29

> On April 15, 1980, Citibank filed its corporate income tax returns for the year ended December 31, 1979 (Exh. "E:), showing a net loss of P74,854,916.00 and its tax credits totalled P6,257,780.00, even without including the amounts withheld on rental income under the Expanded Withholding Tax System, the same not having been utilized or applied for the reason that the year's operation resulted in a loss. (Exh. "E-1 & E-2"). The taxes thus withheld by the tenants from rentals paid to Citibank in 1979 were not included as tax credits although a rental income amounting to P7,796,811.00 was included in its income declared for the year ended December 31, 1979 (Exhs. "E-3" & "E-4").
>
> For the year ended December 31, 1980, Citibank's corporate income tax returns (Exh. "EC"), filed on April 15, 1981, showed a net loss of P77,071,790.00 for income tax purposes. Its available tax credit (refundable) at the end of 1980 amounting to P11,532,855.00 (Exh. "BC-1" & "BC-2") was not utilized or applied. The said available tax credits did not include the amounts withheld by Citibank's tenants from rental payments in 1980 but the rental payments for that year were declared as part of its gross income included in its annual income tax returns (Exh. "BC-3").
>
> On October 31, 1981, Citibank submitted its claim for refund of the aforesaid amounts of P270,160.56 and P298,829, respectively, or a total of P568,989.85; and on October 12, 1981 filed a petition for review with the Court of Tax Appeals concerning subject claim for tax refund, docketed as CTA Case No. 3378.[5]
>
> On August 30, 1981, the Court of Tax Appeals adjudged Citibank's entitlement to the tax refund sought for, representing the 5% tax withheld and paid on Citibank's rental income for 1979 and 1980. xxxx."

In its decision[6] granting a refund to petitioner,[7] the Court of Tax Appeals rejected Respondent Commissioner's argument that the claim was not seasonably filed:

> "WHEREFORE, respondent is hereby ordered to grant the refund of the amount sought by the petitioner. No costs."

Not satisfied, the Commissioner appealed to the Court of Appeals. In due course, Respondent Court issued the assailed Decision and Resolution, ruling that the five percent tax withheld by tenants from the rental income of Citibank for the years 1979 and 1980 was in accordance with Section 1(c) of the Expanded Withholding Tax Regulations (BIR Revenue Regulation No. 13-78, as amended) and did not involve illegally or erroneously collected taxes. The dispositive portion of the

Decision reads:[8]

> "WHEREFORE, the appealed judgment of August 30, 1991, adjudging Citibank, N.A., Philippine Branch, entitled to a tax refund/credit in the amount of P569,989.85, representing the 5% withheld tax on Citibank's rental income for the taxable years 1979 and 1980 is hereby REVERSED. No pronouncement as to costs."

Respondent Court denied the motion for reconsideration of the petitioner-bank in the assailed Resolution, the dispositive portion of which reads:[9]

> "WHEREFORE, for want of merit, the motion for reconsideration, dated June 19, 1992, of respondent Citibank, N.A. is hereby DENIED.
>
> SO ORDERED."

Hence, this petition under Rule 45 of the Rules of Court.

The Issues

The appellate court ruled that it was not enough for petitioner to show its lack of income tax liability against which the five percent withholding tax could be credited. Petitioner should have also shown that the withholding tax was illegally or erroneously collected and remitted by the tenants. On the other hand, petitioner counters that Respondent Court failed to grasp "two fundamental concepts in the present income tax system, namely: (1) the yearly computation of the corporate income tax and (2) the nature of the creditable withholding tax."

In the main, petitioner thus raises the following issues: (1) For creditable withholding tax to be refundable, when should the illegality or error in its assessment or collection be reckoned: at the time of withholding or at the end of the taxable year? (2) Where the income tax returns show that no income tax is payable to the government, is a creditable withholding tax, as contradistinguished from a final tax, refundable (or creditable) at the end of the taxable year?

The Court's Ruling

The petition is meritorious.

First Issue: Determination of the Illegality or Error in Assessment or Collection

Tax refunds are allowed under Section 230 of the National Internal Revenue Code:

> "SEC. 230. *Recovery of tax erroneously or illegally collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously

> or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Petitioner maintains that it is entitled to a refund of the five percent creditable withholding tax in 1979 and 1980, since its operations resulted in a net loss and thus did not have any income tax liability for such years. Respondent Court refused to allow the claim for refund for the reason that the taxes were "not illegally or erroneously collected:"[10]

> "It is decisively clear that the instant claim for tax refund under scrutiny does not involve illegally or erroneously collected taxes. It involves the 5% tax withheld by tenants from the rental income of Citibank for the years 1979 and 1980, in accordance with Section 1(c) of the Expanded Withholding Tax Regulations (BIR Revenue Regulation No. 13-78 as amended) x x x.
>
> It is thus evident that the tenants or lessee of Citibank were required by law to withhold and pay to BIR 5% of their rental and, therefore, such withholding taxes were not illegally or erroneously collected. It was the burden of Citibank to prove that the taxes it asked to be refunded were illegally or erroneously collected; an onus probandi Citibank utterly failed to discharge."

We disagree with the Court of Appeals. In several cases, we have already ruled that income taxes remitted partially on a periodic or quarterly basis should be credited or refunded to the taxpayer on the basis of the taxpayer's final adjusted returns, not on such periodic or quarterly basis.[11] For instance, in the recent case of Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.,[12] the Court held:

> "x x x When applied to taxpayers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code x x x.

> It may be observed that although quarterly taxes due are required to be paid within 60 days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.
>
> This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.
>
> xxx
> xxx xxx
>
> Clearly the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. x x x x."

In the present case, there is no question that the taxes were withheld in accordance with Section 1(c), Rev. Reg. No. 13-78. In that sense, it can be said that they were withheld legally by the tenants. However, the annual income tax returns of petitioner-bank for tax years 1979 and 1980 undisputedly reflected the net losses it suffered. The question arises: whether the taxes withheld remained legal and correct at the end of each taxable year. We hold in the negative.

The withholding tax system was devised for two main reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; and second, to ensure the collection of the income tax which could otherwise be lost or substantially reduced through failure to file the corresponding returns.[13] To these, a third reason may be added: to improve the government's cash flow. Under Section 53 a-f of the tax code which was in effect at the time this case ripened, withholding of tax at source was mandated in cases of: (a) tax free covenant bonds, (b) payments of interest, dividends, rents, royalties, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual, periodical, or casual gains, profits and income, and capital gains of non-resident aliens and foreign corporations; (c) dividends from a domestic corporation and royalties received by resident individuals and corporation; (d) certain dividends; (e) interest on bank deposit; and (f) other items of income payable to resident individuals or corporations. Section 53-f was amended by Presidential Decree No. 1351, delegating to the Secretary of Finance the power to require the withholding of a tax, as follows: