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or simulated, there is no more necessity to discuss the issue as to whether or not a trust relationship was created between them.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 64122, affirming the Decision of the Regional Trial Court of Cadiz City, Negros Occidental, Branch 60, in Civil Case No. 278-C, are *REVERSED AND SET ASIDE*. The complaint of the private respondents is *DISMISSED*.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Callejo, Sr., Chico-Nazario, and *Nachura, JJ.,* concur.

THIRD DIVISION

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

BANCO FILIPINO SAVINGS and MORTGAGE BANK, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. TAXATION; INCOME TAX; CREDITABLE WITHHOLDING TAX; THREE CONDITIONS FOR THE GRANT OF CLAIM FOR REFUND.— 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; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee

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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*** x x x.

2. ID.; ID.; ID.; ID.; FACT OF WITHHOLDING; WHEN ESTABLISHED.— As to what evidence would establish the nature of the tax withheld and the income payment from which it was deducted, the Court held: Petitioner also asserts that the confusion or difficulty in the implementation of Revenue Memorandum Circular 7-90 was the reason why CDB took upon itself the task of withholding the taxes arising from the sale, to ensure accuracy. ***Assuming this were true, CDB should have, nevertheless, accomplished the necessary returns to clearly identify the nature of the payments made and file the same with the BIR. Section 2 of the circular clearly provides that the amount of withholding tax paid by a corporation to the BIR during the quarter on sales or exchanges of property and which are creditable against the corporation's tax liability are evidenced by Confirmation/Official Receipts and covered by BIR Form Nos. 1743W and 1743-B. On the other hand, Revenue Regulation 6-85 states that BIR Form No. 1743.1 establishes the fact of withholding.*** Since no competent evidence was adduced by petitioner, the failure to offer these returns as evidence of the amount of petitioner's entitlement during the trial phase of this case is fatal to its cause. x x x. In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent

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showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

APPEARANCES OF COUNSEL

Generoso S. Fulgencio, Jr. for petitioner.
Wilmer B. Dekit for BIR.

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[1] and October 16, 2002 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 55470[3] which affirmed the October 5, 1999 Decision[4] of the Court of Tax Appeals (CTA) in CTA Case No. 5611.

The facts are as stated by the CTA.[5]

In its Bureau of Internal Revenue (BIR) Form No. 1702 or Corporation/Partnership Annual Income Tax Return[6] for fiscal year 1995, Banco Filipino Savings and Mortgage Bank

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[1] Penned by Associate Justice Cancio C. Garcia (now a member of this Court) and concurred in by Associate Justices Marina L. Buzon and Eliezer R. De Los Santos (now deceased); CA *rollo*, pp. 54-59.

[2] *Id*. at 71.

[3] Entitled "*Banco Filipino Savings and Mortgage Bank, Petitioner, v. Commissioner of Internal Revenue and Court of Tax Appeals, Respondents*."

[4] Records, p. 159.

[5] CTA Decision, *id*. at 159-166.

[6] Exhibit "A", *id*. at 43.

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(petitioner) declared a net operating loss of ₱211,476,241.00 and total tax credit of ₱13,103,918.00, representing the prior year's excess tax credit of ₱11,481,342.00 and creditable withholding taxes of ₱1,622,576.00.[7]

On February 4, 1998, petitioner filed with the Commissioner of Internal Revenue (CIR) an administrative claim[8] for refund of creditable taxes withheld for the year 1995 in the amount of ₱1,622,576.00.

As the CIR failed to act on its claim, petitioner filed a Petition for Review[9] 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 ₱720.00 as tax withheld on rental income paid to petitioner (Exhibit "II");[10] 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").[11]

In his Answer,[12] respondent CIR interposed special and afirmative 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

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[7] Exhibit "A-2", *id*. at 44.

[8] Exhibit "LL", *id*. at 6.

[9] *Id*. at 1.

[10] *Id*. at 111.

[11] *Id*. at 77-100.

[12] *Id*. at 13.

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(₱18,884.40) in favor of the Petitioner, representing overpaid income tax for the year 1995.

SO ORDERED.[13]

The CTA allowed the ₱18,884.40-portion of petitioner's claim for refund as these are covered by Exhibits "AA" through "HH",[14] 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 ₱1,603,691.60-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,[15] the form required under Revenue Regulations No. 6-85 (as amended by Revenue Regulation No. 12-94), to support a claim for refund.[16]

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

Hence, herein Petition where the issues may be condensed into one: whether the CA erred in affirming the disallowance by the CTA of ₱1,603,691.60 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

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[13] *Id*. at 166.

[14] *Id*. at 101-108.

[15] Also known as "Certificate of Creditable Income Tax Withheld at Source."

[16] CTA Decision, records, p. 165.

[17] CA *rollo*, p. 5.

[18] *Id*. at p. 71.

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CIR within the two-year period from the date of payment of the tax;[19] 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[20] 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 ₱1,622,576.00 subject of the claim.[21]

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").

Petititioner 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

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[19] Jose C. Vitug and Ernesto D. Acosta, *Tax Law and Jurisprudence,* 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

[20] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

[21] CTA Decision, records, pp. 139-140.

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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***

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[22] Petition for Review, *rollo*, pp. 20-21.

[23] G.R. No. 129130, December 9, 2005, 477 SCRA 49.

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> ***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 proferred 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 of withholding taxes which CDB may also be liable to remit as a withholding agent x x x."[24] (Emphasis ours)

As to what evidence would establish the nature of the tax withheld and the income payment from which it was deducted, the Court held:

> Petitioner also asserts that the confusion or difficulty in the implementation of Revenue Memorandum Circular 7-90 was the reason why CDB took upon itself the task of withholding the taxes arising from the sale, to ensure accuracy. ***Assuming this were true, CDB should have, nevertheless, accomplished the necessary returns to clearly identify the nature of the payments made and file the same with the BIR. Section 2 of the circular clearly provides that the amount of withholding tax paid by a corporation to the BIR during the quarter on sales or exchanges of property and which are creditable against the corporation's tax liability are evidenced by Confirmation/Official Receipts and covered by BIR Form Nos. 1743W and 1743-B. On the other hand, Revenue Regulation 6-85 states that BIR Form No. 1743.1 establishes the fact of withholding.*** Since no competent evidence was adduced by petitioner, the failure to offer these returns as evidence of the amount of petitioner's entitlement during the trial phase of this case is fatal to its cause. x x x.[25] (Emphasis supplied)

In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate

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[24] *Id*. at 54-55.

[25] *Id*. at 57.

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from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.

At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6[26] of Revenue Regulations No. 6-85,[27] BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

In relation to withholding taxes from rental income, the requisite information can be found in BIR Form No. 1743-750. Petitioner is well aware of this for its own Exhibits "AA" through "HH" are all in BIR Form No. 1743-750. As earlier stated, the CTA approved petitioner's claim for refund to the extent of ₱18,884.40, which is the portion of its claim supported by its Exhibits "AA" through "HH".

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[26] Section 6. *Statement of income payments made and taxes withheld*.- Every withholding agent required to deduct and withhold taxes under these Regulations shall furnish each recipient, in respect to his or its receipts, during the calendar quarter or year a written statement (BIR Form No. 1743.1) 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. Such statement (BIR Form No. 1743.1) shall be furnished the corporate payee not later than the 20th day following the close of the quarter in which payment was made or not later than March 1 of the following year in the case of individual payee. However, upon request, the payor shall be obliged to furnish such statement to the payee simultaneous with the income payment.

The amount so withheld shall be allowed as a tax credit against the income tax liability of the payee in the taxable quarter or year in which the income was earned and received.

[27] As amended by Revenue Regulation No. 12-94.

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In the present case, the disputed portions of petitioner's claim for refund is supported merely by Exhibits "C" through "Z" and Exhibit "II", Exhibits "C" through "Z" were issued by petitioner as payee purportedly acting as withholding agent, and not by the alleged payors in the transactions covered by the documents. Moreover, the documents do not identify the payors involved or the nature of their transaction. They do not indicate the amount and nature of the income payments upon which the tax was computed or the nature of the transactions from which the income payments were derived, specifically whether it resulted from the sale of petitioner's acquired assets.

As to petitioner's Exhibit "II", while it was issued by a payor, the document does not state the amount and nature of the income payment. Hence, it cannot be verified from the document if the tax withheld is correct.

Perhaps aware of the deficiencies in its evidence, petitioner also presented Exhibit "B"[28] which is a list of Miscellaneous Assets it sold to various persons. However, Exhibit "B" was prepared by petitioner's own real estate department, and is therefore of doubtful credence.[29] Furthermore, there is nothing in Exhibit "B" which would link the the transactions described therein to the taxes reflected in Exhibit "II" and Exhibits "C" through "Z".

For all its deficiencies, therefore, petitioner's Exhibits "C" through "Z" cannot take the place of BIR Form No. 1743.1 and its Exhibit "II", of BIR Form No. 1743-750. Petitioner cannot fault the CA and CTA for finding said evidence insufficient to support its claim for tax refund. Such finding of both courts, obviously grounded on evidence, will not be so lightly discarded by this Court,[30] not even on a plea for

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[28] Records, p. 76.

[29] *Far East Bank and Trust Company v. Court of Appeals*, *supra* note 25, at 52.

[30] *Paseo Realty and Development Corporation v. Court of Appeals*, G.R. No. 119286, October 13, 2004, 440 SCRA 235, 242.

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liberality of which petitioner, by its own negligence, is undeserving.[31]

WHEREFORE, the petition is *DENIED* for lack of merit.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Callejo, Sr., Chico-Nazario, and *Nachura, JJ.*, concur.

SECOND DIVISION

[G.R. No. 163768. March 27, 2007]

JULIUS KAWACHI and GAYLE KAWACHI, *petitioners, vs.* **DOMINIE DEL QUERO and HON. JUDGE MANUEL R. TARO, Metropolitan Trial Court, Branch 43, Quezon City,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ARBITER HAS JURISDICTION TO AWARD NOT ONLY RELIEFS PROVIDED BY LABOR LAWS BUT ALSO DAMAGES GOVERNED BY THE CIVIL CODE; JUSTIFIED.— Article 217(a) of the Labor Code, as amended, clearly bestows upon the Labor Arbiter original and exclusive jurisdiction over claims for damages arising from employer-employee relations — in other words, the Labor Arbiter has jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code.

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[31] *Norris v. Hon. Parentela, Jr.*, 446 Phil. 462, 472 (2003).