LW.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLID BANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5820

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 27 2001

x - x

DECISION

This petition for review is seeking for the refund in the amount of P6,131,434.56, allegedly representing overpaid gross receipts tax for the four calendar quarters of 1997.

The facts are briefly stated as follows:

Petitioner is a domestic banking institution organized and existing under the laws of the Philippines with principal office address located at 777 Paseo de Roxas, Makati City.

For the calendar quarters of 1997, Petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts (referring to 5% GRT rate) in the total amount of P2,229,470,672.81, with corresponding gross receipts tax payments in the sum of P111,473,533.63, detailed as follows:

Quarter Ended	Exh.	Gross Receipts	Gross Receipts Tax
March 31, 1997	A	P 485,293,073.32	P 24,264,653.67
June 30, 1997	B	498,062,950.98	24,903,147.54
September 30, 1997	C	593,302,026.53	29,665,101.32
December 31, 1997	D	652,812,621.98	32,640,631.10
Total		P2,229,470,672.81	P111,473,533.63

In arriving at the computation of the gross receipts tax, Petitioner alleged that it erroneously included in the taxable gross receipts, the final withholding taxes derived from its passive (interest) income on trading account securities in the total amount of P122,268,691.88, broken down as follows:

Quarter Ended	Gross Amount	20%Final Tax
March 31, 1997	P189,218,927.63	P 37,843,785.26
June 30, 1997	117,526,428.73	23,505,285.75
September 30,1997	142,745,895.34	28,549,179.07
December 31, 1997	163,652,204.74	32,730,440.95
Total	P613,143,456.44	P122,268,691.88

On January 30, 1996, this Court rendered a decision in C.T.A. Case No. 4720 entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue** where it was held that the 20% final withholding tax on a bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

On the strength of the aforementioned Asian Bank case, Petitioner on April 19, 1999, filed a letter-request for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the amount of P6,131,434.56 (Exhibit E) computed as follows:

Interest Income Subjected to the 20% Final Tax Withheld At Source	P613,143,456.44
Multiply by Final Tax Rate	20%
20% Final Tax Withheld At Source	P122,268,691.88
Multiply by GRT Rate	5%
Overpaid GRT	P 6,131,434.56

Without waiting for an action from the Respondent, Petitioner on April 20, 1999, lodged its appeal in this Court in order to toll the running of the two-year prescriptive period to judicially claim a refund pursuant to Section 230 of the Tax Code, as amended.

Respondent, in his Answer, raised the following Special and Affirmative defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by Respondent;

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. There is no provision of law which excludes the 20% final tax withheld on passive income earned by banking institutions in the computation of the 5% gross receipts tax;

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

9. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended; and

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**).

In order to support its claim for refund, Petitioner presented the following evidence:

1. The Quarterly Percentage Tax Returns for the year 1997 (Exhibits A to D, inclusive of submarkings);

2. The administrative claim for refund filed with the Bureau of Internal Revenue (Exhibit E);

3. Letter from the Bureau of Treasury's Payments Division with the attached summary report concerning taxes withheld on Petitioner's purchases of treasury bills (Exhibit F, inclusive of submarkings);

4. Report of SGV and Co. signed by its Partner, Ms. Feliza A. Peralta, the commissioned independent CPA, who conducted the examination on Petitioner's documents relative to the instant claim for refund (Exhibit G); and

5. The pre-marked documents examined by the commissioned independent CPA which consist of the Bureau of Treasury and Bangko Sentral ng Pilipinas' certifications of final taxes withheld for the year 1997, trading orders, Bangko Sentral ng Pilipinas' advice registers, and security trade deal slips (Exhibits H, H-1 to H-24, I, I-1 to I-37, J, J-1 to J-20, K, and K-1 to K-286).

Respondent, on the other hand, submitted his case for decision sans the presentation of evidence. He also failed to file his memorandum.

The Court is now tasked to resolve the following issues jointly stipulated by the parties, thus:

> 1. Whether or not the tax base for computing the Petitioner's 5% gross receipt tax should include the 20% final tax withheld at source from Petitiner's interest income from government securities for the four quarters of 1997;
>
> 2. Whether or not the 20% final withholding tax was withheld at source from the Petitioner's interest income from government securities for the four quarters of 1997;
>
> 3. Whether or not the 20% final withholding tax was included as part of the tax base for computing the 5% gross receipts tax liability of the Petitioner; and
>
> 4. Whether or not the Petitioner's claim for refund of overpaid gross receipts tax for the four quarters of taxable year 1997 is substantiated.

Anent the first issue, this Court, in a long line of cases, has already ruled that the 20% final taxes on interest income should no longer form part of taxable gross receipts for purposes of computing the gross receipts tax. This is the maxim behind Our decision in the case of *Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996, supra*, pertinent portions of which read as follows:

> "We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.
>
> x x x x x x x x x
>
> This conclusion is in accord with the interpretation of the Supreme Court in the case entitled Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821, as quoted by this Court in disposing of a similar issue in the case entitled **Compania Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426 dated November 14, 1996**, thus:
>
>> In the second place, the highest tribunal of the land interpreted the term: "gross receipts" to mean all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government o some person other than the taxpayer. Thus, it was held:
>>
>>> "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the ½% which it directs same Club to turn over to the Board of Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds which it directed the Club to give, or know the Club would give, to winning horses and Jockeys — admitted 5%. It is true that the law says that out of the total wager funds 12½% shall be set aside as the `commission' of the track owners but the law itself takes official notice, and virtually approves or directs payment of the portion that goes to owners of horses as prizes and bonuses of jockeys, which portion is admittedly 5% out of the 12½% commission. As it did not at that time contemplate the application of `gross receipts' revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.

> "Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor." (The Commissioner of Internal Revenue vs. Manila Jockey Club, Inc. G.R. Nos. L-13890 and L-13887, June 30, 1960)

It is to be noted that, under Section 260 of the Tax Code, a race-track is subject to an amusement tax of 20% of its gross receipts and the term `gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." Notwithstanding the broad and all-embracing definition of the term "gross receipts" found in our amusement tax law, our Supreme Court did not adopt a literal interpretation of the said term in the case of the Manila Jockey Club, Inc., supra."

Our ruling in the above decision has already been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Philippines, CA G.R. SP No. 52707, August 17, 1999,** when it ruled in this manner:

> Accordingly the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue, for the corresponding year that the same was actually withheld and considered final withholding taxes under Section 50 of the same Code. Indubitably, <u>to include the same to Respondent's (Citytrust) gross receipts for the year 1994 would be to tax twice the passive income derived by the Respondent for the said year, which would **constitute double taxation** anathema to our taxation laws</u>." (Underlining supplied).

The legal issue having been settled by the foregoing discussion, what remains to be resolved are the factual aspects of the case.

Section 230 of the Tax Code, as amended, provides that a claim for refund, both with the Bureau of Internal Revenue and with this Court, must be filed within two years from the date of payment of the tax. In counting the two-year prescriptive period, the filing of the quarterly percentage tax return should be considered as the "date of payment of the tax" (**Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA**

Case No. 5408, April 14, 1999 and Citytrust Investment Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5403, April 19, 1999). Applying the above ruling in the case at bar reveals that Petitioner was able to file its claim for refund with the Bureau of Internal Revenue on April 19, 1999, and the Petition for Review with this Court on April 20, 1999, both within the two-year reglementary period, reckoned, at the earliest, from April 21, 1997, the date when Petitioner filed its 1997 First Quarterly Percentage Tax Return.

Aside from proving that the Petition for Review was timely filed within the two-year reglementary period, Petitioner must also prove its compliance with the following requisites:

1. That it paid the gross receipts tax;

2. That it erroneously overpaid its gross receipts tax by including the 20% final withholding tax derived on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the period involved; and

3. That the withholding agent certifies that the 20% final withholding tax was paid on such passive income. (**Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 5458, February 15, 1999 and BPI Capital vs. Commissioner of Internal Revenue, CTA Case No. 5457, March 1, 1999;** *cited in* **Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999.)**

A careful examination of the records of this case discloses that Petitioner was only able to comply with requirement number one and partially with requirement number three.

Petitioner was able to prove that it paid gross receipts tax for the four calendar quarters of 1997 as evidenced by the machine validations appearing on the lower portion of the quarterly percentage tax returns (Exhibits A, B, C, and D). The Bangko Sentral ng Pilipinas (BSP) and the Bureau of Treasury certified that the 20% final withholding tax on treasury bills purchased by Petitioner through regular auction were withheld and remitted to the Bureau of Internal Revenue (Exhibits I, I-1, and I-2). However, the evidence submitted by Petitioner are inadequate to guide the Court as to what portion of the alleged 20% final tax in the amount of P122,268,691.88 derived from interest on trading account securities was included in its taxable gross receipts.

The audit procedures adopted by the independent CPA are insufficient to come-up with the desired result of ascertaining the propriety of Petitioner's claim for refund. The audit procedures performed focused on tracing the daily summary total of accrued interest from the Bank's "Detail Transactions and Trial" schedule to the "Master List of Income" without checking the authenticity of individual entries reflected in the summary or schedule against their supporting documents. We consider the schedule of daily accrual of interest income to be self-serving evidence because entries therein should have been supported by another document **(Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5641, June 7, 2000)**. In addition, documents such as "Detail Transactions and Trial" schedule, "Master List of Income," from which the independent CPA based her findings were never offered as evidence. Furthermore, confirmation of sale, confirmation of purchase, inventory of securities and the like which are all essential to substantiate the alleged investment of Petitioner in trading accounts securities were also not presented in evidence. The Court likewise noticed that the final withholding taxes on interest income allegedly earned by Petitioner from fixed rate treasury notes have no certification of withholding.

In conclusion, the failure of Petitioner to present the pertinent documents and individual transactions that would support the certification of the independent CPA proved fatal to its claim for refund. Well-settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332**).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WITH CONCURRING OPINION:

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge